A Windfall for the Magnates. The Development of Woodland Ownership in Denmark c. 1150-1830

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“A Windfall for the magnates”

The Development of Woodland Ownership in Denmark c. 1150-1830

by
Bo Fritzbøger

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Preface

Ideas of proprietorship and actual, individual possession of things form some of the fundamental issues of what somewhat deceptively bears the label 'western civilization'. The distinction 'mine' as against 'not mine' is essential to modernity in general and capitalism in particular. So the quest for the genesis of private property is an obvious endeavour for historical research.

The scope of this book is, however, more restricted than property rights history in general. Its topic is property rights regulation in relation to woodland management. As highly complex cultural landscapes, woods represent a compound bundle of natural resources. And, since the production of fuel wood and timber in particular was characterised by an imminent anxiety about shortage, property and use rights were already being defined and substantiated during the Middle Ages. Individual private property, however, did not evolve on a large scale until the nineteenth century.

Despite sincere attempts to write a coherent text, this book might appear rather as a patchwork. This is primarily due to the protracted process of its creation. In the years around 1990 I wrote a couple of books about the history of woodland management and landscape history. In both cases the complex property and use rights pertaining to forests proved essential as a key to understanding both the written sources that I employed and the reality they reflected. So in the period 1992-95 I received a scholarship from The Research Council for the Humanities aimed at an investigation of the abrogation of common forest rights during the eighteenth century.

After this I was for some years able to improve the results of this project through a number of regional investigations embedded in more comprehensive studies of landscape history. A grant from The Carlsberg Foundation enabled me to look into medieval records as well as to compile my results in the present form, in which they were finally published thanks to grants from The Research Council for the Humanities and the University of Copenhagen.

The decision to write this book in English instead of in Danish has compelled me to make some rather difficult choices. For in spite of the great richness of the English vocabulary, many of the more technical historical terms that I use originate from circumstances inherently different from Danish society of the past. Approximate Danish equivalents for some key concepts are therefore given in the index. For a

small number of terms, however, no adequate translation has been found. In these cases, the Danish words used in the text are briefly explained in the index.

For various kinds of support throughout this long process it is my pleasant duty to thank Jette Baagøe, Michael Gelting, Jens Christian Vesterskov Johansen, Niels Elers Koch, J. Bo Larsen, Bent Odgaard, Lars Östlund, the Department of History (University of Copenhagen), the Center for Forest and Landscape Research (The Agricultural and Veterinary University, Copenhagen), The Research Council for the Humanities and The Carlsberg Foundation. I also owe thanks to all my colleagues in the joint research projects Land-Use History and Plant Diversity (headed by Bent Aaby), Boundaries in the Landscape (headed by Kjell Nilsson), and Cultural Processes in Nordic Woodland Communities (headed by Ingar Kaldal). I wish to thank John Mason for his careful revision of the language.

Finally, I am particularly grateful to those who have read and commented upon earlier drafts of parts of the book: Benedicte Fonnesbech-Wulff, Kurt Villads Jensen, Michael Kræmmer, Martin Palsgaard, Karl-Erik Frandsen and Per Eliasson. Needless to say, however, I alone am to blame for all remaining misconceptions, contortions and omissions.

Bo Fritzbøger
Hvalsø, March 2004

Part I

Introduction

'One year, the lady of the local estate provided the men of Gudbjerg with plenty of wood – half a score of oak trees and an equal number of beech trees. Everyone was occupied for a fortnight and every man received wood for carriage timber, cooperage, planks for all sorts of furniture and construction, not to mention a plentiful supply of fuel. The mistress even had the kindness to let it be understood she would not resent it if they sold "what they could do without".

Among the men of the village community, the idea was mooted that it would be convenient to collect some more wood over and above this substantial contribution. Due to the great quantities they had already received in an honest manner, it would be utmost difficult to detect further cuttings. "In an honest manner?" repeated Old Niels. "It is an honest manner if we were to cut every oak and beech that Our Lord lets grow in our woodlots, just as we cut alder and ash, hazel and thorn. I dare remit you all of your sins for that piece of work. We only follow in the footsteps of our forefathers by doing so. They have always believed that "the forest thief shall neither hang nor burn". It is only vicars and district constables and the whole crowd of landlords who claim that it is stealing when peasants cut a tree in their own wood. The idea gives, obviously, a windfall for the magnates. But it would be a disgrace if we were to differ so much from the thoughts of our ancestors as to convert to the same opinion"'.

R. Hansen 1883, pp. 209f.

Chapter 1
The scheme

Themes and objectives

The schoolteacher Rasmus Hansen wrote down the oral tradition of Old Niels and his fellow tenants (*fæstere*) of Gudbjerg in southern Funen in the 1880's. As a child, he had heard it told by his grandmother as a reminiscence from her childhood back in the 1760's. The story accurately brings together key elements of early modern woodland proprietorship: the common decision -making by the village fellowship, the peasants' dependence upon seigneurial provisions of oak and beech wood, the distinction between oak and beech on the one hand and alder, ash, hazel and thorn on the other, prohibition against the sale of wood provisions, the existence of farm woodlots and – most fundamentally – the immanent conflict between lords and peasants regarding the right to use the wood.

Rasmus Hansen resolved that the struggle had only come to an end during 'the last generation', the landlords being the victorious side.[1] This centuries-long struggle for the right to utilise that broad range of natural resources located in the wood is the subject of this book. The investigation begins in the Middle Ages, when the first written sources give (albeit limited) information on the institutions of forest ownership. And it ends when the disputes were silenced by effective and radical land reforms during the first decades of the nineteenth century.

Property rights are regarded first and foremost as interpersonal relations (see chapter 3). In the words of Morris R. Cohen, '... a property right is a relation not between an owner and a thing, but between the owner and other individuals in reference to things.'[2] Consequently, when examining woodland property rights, rural society will be in focus, not the woods themselves. Changing and sometimes incompatible concepts of possession and ownership as they are expressed in legislation, administration and legal conflicts will be our main interest.

It is, however, clear that property relations indirectly contributed to the continuous reshaping of the cultural landscape. Likewise property rights influenced the complex interchange between market demands and wood production. The course of the struggle between lords and peasants was significantly influenced by scarcity of

1. R. Hansen 1883, p. 208.
2. M. R. Cohen 1967, p. 45.

wood whether real or imagined. Furthermore, property rights interrelated with altering forms of forestry. Management was, for example, dependent on the distribution of users' rights according to tree species and size. So the implications of various property rights regimes were undoubtedly visible in the forest as well as on the fuel and timber markets. These relations have been treated in some detail elsewhere.[3]

Property rights are here broadly defined by **the ways in which the access to exploit woodland resources was distributed and controlled in praxis** (for a more elaborate definition, see p. 23).[4] Praxis evolved through the occasional legal cases that represented clashing normative definitions of property rights. More generalised prescripts on the interpretation of property and, specifically, the right to utilise the forest are expressed in state policies, legislation and jurisprudence. Regarding the latter, however, only very scanty evidence is found. To the degree in which they actually considered theoretical problems, early modern Danish jurists apparently relied heavily upon their European colleagues (see p. 249).[5]

Property rights were enacted in various ways. Firstly, actual possession and use of the forest formed the fundamental attributes of property. Secondly, acts of redistribution or reformulation of use rights either affirmed the existing property structure or defined a new one. Thirdly, defence of *status quo* in the court of law (or in the village inn) enunciated a certain ambiguity of property rights. Finally, payment of rents and taxes related to woodland management elucidated the universal restriction of property rights; in every society organised as a state, an inherent discord between local and central power is inevitable. Documents originating from all these relations have been employed in the quest to describe the praxis of forest ownership.

Even normative articulations on property rights are perceivable as praxis, i.e. as means to change or maintain the actual status. As noted by Karl Marx and Friedrich Engels, '[S]ociety is not founded upon the law; this is a legal fiction. On the contrary, the law must be founded upon society […] As soon as [a law] ceases to fit the social conditions, it becomes simply a bundle of paper'.[6] Normative prescriptions in subtle ways reflect society. And the interconnection – disparity or affinity – between law and reality is highly relevant to this investigation.

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3. B. Fritzbøger 1992A; B. Fritzbøger 1994.
4. A distinction between 'relations of effective power over persons and productive forces' and 'relations of legal ownership' is formulated in G. A. Cohen 1978, p. 63.
5. D. Tamm 1996.
6. Cf. G. A. Cohen 1978, p. 233; 'Die Gesellschaft beruht aber nicht auf dem Gesetze. Es ist eine juristische Einbildung. Das Gesetz mu? vielmehr auf der Gesellschaft beruhn […] Sobald [das Gesetz] den gesellschaftlichen Verhältnissen nicht mehr entspricht, ist er nur noch ein Ballen Papier' (Der Prozess gegen den rheinischen Kreisausschuss der Demokraten, cf. E. Hennig et al. (eds) 1974, p. 617).

Even though the topic is of paramount interest to international research,[7] historical literature has paid little attention to the property rights regimes organising Danish forest administration. So, whereas individual studies have been made regarding modern times,[8] the history of property rights in regard to forestry has been written almost exclusively in broad accounts of forest history.[9] Virtually no primary research on the subject has been done.

The only noteworthy exception is a thorough exposé of the history of forest legislation written by Adolf Oppermann as part of the preparation of a new forest act of 1935.[10] It gives among other things a detailed description of the genesis of the Forest Conservation Act of 1805. Furthermore some minor local studies deal with particular aspects of forest ownership. Wilhelm von Antoniewitz in 1944 published a study of the far from typical property relations relating to Frejlev Skov in Lolland. And in 1969 Holger Munk described social and legal conflicts induced by traditional peasant management. Finally, Erik Oksbjerg (1989A) has discussed various medieval terms applied to forest ownership.

A few studies have dealt with the abalienation of former crown forests.[11] And the dissolution of common woodland rights was described on both a regional (Schleswig)[12] and a local scale.[13] Finally, quite a comprehensive literature on local history refers to early modern forest theft.[14]

In addition to such particular investigations, a multitude of studies concern various general property rights issues of relevance for woodland possession. Rather than pretending to give an exhaustive overview, some of these – principally those concerning the definition and distribution of landed property – should be singled out. So, whereas Gudmund Hatt (1939) in his days was fairly solitary in studying Iron Age ownership of land, the situation of the Middle Ages has been subject to a variety of analyses during the last century.[15] And the same goes for the early Modern open field system.[16] Finally, a limited number of studies have endeavoured to apply concepts such as 'feudal society' to Danish history.[17]

In broad outlines, the existing literature draws a rather fuzzy picture of the history of woodland ownership. In an otherwise candid description of the develop-

7. E.g. K. Hasel 1985, pp. 59 ff.
8. E.g. A. P. Pedersen 1982.
9. E.g. A. Oppermann 1896-1902; A. H. Grøn 1955.
10. A. Oppermann 1929.
11. N. K. Hermansen 1947; H. Nielsen 1954-56.
12. T. Fink 1941.
13. A. H. Grøn 1944.
14. E.g. S. Kjær 1888; P. Jensen 1896 and S. Elkjær 1917.
15. E.g. E. Porsmose 1987; P. Holm 1988 and M. Gelting 2000.
16. P. Hansen 1889; H. H. Fussing 1942; P. Meyer 1949; K.-E. Frandsen 1983.
17. B. Scocozza 1977; O. Bernild & H. Jensen 1978.

ment of seigneurial woodland prerogatives during the late Middle Ages, Erland Porsmose, for example, identifies overwood with timber (*gavntræ*) and thereby neglects the importance of fuel wood.[18] Still, according to Adolf Oppermann, the employment of all these special terms remained unstable.[19] So it is hardly surprising that Eiler Worsøe argues for a definition of overwood solely according to species, whereas I have repeatedly claimed it to be a matter of both species and size.[20]

A similar haziness characterises the treatment of the woodland clauses in thirteenth-century provincial laws. A paragraph concerning the boundary between field and forest in *Jyske Lov* (I.53) is characterised by Annette Hoff as 'apparently fairly simple'[21] whereas Erik Oksbjerg finds it 'unquestionably obsolete'.[22] And, when it comes to medieval land distribution in general, confusion rather than clarity distinguishes the situation.

The available literature outlines the general issues of woodland property as it developed in conjunction with feared or actual resource shortage and changing power structures. Yet there exist no detailed analyses either of the geographic and temporal amplitude of its complex forms nor of its gradual transition from customary, communal use rights to written property claims. So, rather than explicitly examining a limited scholarly tradition, the present survey aims to recapitulate and assess the issue by means of a novel analysis of the historical evidence.

Property rights do not evolve in a void. To understand their structural complexity, the social, legal and political conflicts generated by them and their gradual transformation, it is necessary to conceive them in their wider societal context. With this in mind, the analysis has been divided into three temporal phases:

1) The period 1150-1350 was characterised by an excessive inequality in the distribution of wealth but also by increasing production and population. Little is known in detail about the property relations of this period, but it appears as if allodial large-scale farming existed side by side with both individual and common woods.

2) The demographic collapse in the fourteenth century was followed by an unquestionably feudal society that was to last for some four hundred years (1350-1750). The bond between landlords and tenants was its backbone. In 1536 the Catholic Church was reformed to Lutheranism and from this process followed a major remoulding of the property structure. Extensive lands formerly belonging to the church were shared by crown and nobility. Economic prosperity accompanied

18. E. Porsmose 1987, p. 206.
19. A. Oppermann 1929, p. 51.
20. E. Worsøe 1988, p. 67; B. Fritzbøger 1992, p. 17.
21. A. Hoff 1997, p. 251: 'synes at være ganske enkel'.
22. E. Oksbjerg 2002, p. 69: 'åbenlyst forældet'

simultaneously by demographic expansion until the middle of the seventeenth century led to intensified conflicts over ever sparser wood resources. From *c.* 1640, Danish society was characterised by a general economic and demographic downturn. Meanwhile, however, absolute rule based upon extensive central bureaucracy and comprehensive legislation was established. From 1660 to 1733, no fewer than six major forest laws were issued.

3) Finally the gradual assimilation of ideals from the European Enlightenment into Danish politics during the period 1750-1830 resulted in land reforms that totally redefined the basis of property rights and, consequently, woodland administration and management. On the one hand, this movement was brought about by prosperous economic development during the major part of the eighteenth century. On the other, it appears to have formed the structural basis for sustained growth during the nineteenth.

Geographically, this study concerns itself with the historical Kingdom of Denmark, i.e. the Jutland peninsula, the Danish islands (Zealand, Funen and Lolland-Falster) and, up until 1645/57, what are today the Swedish provinces of Skåne, Halland and Blekinge east of the Sound. Jutland south of the river Kongeåen together with the island of Ærø belonged to the duchy of Schleswig and are left out.

Approaches and methods

The investigation has a broad scope in at least two ways. Firstly, it covers a long period of time in which societies as well as landscapes changed greatly. Secondly, the attempt is not primarily to analyse the history of the ideas of woodland property. Rather, an endeavour will be made to combine the histories of property relations as normative expressions and cognitive actions.[23]

This double amplitude has led to a rather variable employment of historical sources. For the greater part of the period, only scattered and randomly conserved sources are available. The termination of the feudal relations of woodland property in the post-1750 land reformperiod is, however, amply recorded both quantitatively and qualitatively.

An attempt has been made mainly to focus upon the general issues and their variance in time and space. Especially for the later parts of the research period, considerable amounts of source material for geographically or thematically more restricted and detailed analyses exist. The majority of a forbidding bulk of late eighteenth and early nineteenth century public documents has been left out.

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23. A similar distinction of research strategies is formulated by i. a. R. Blickle 1987 (p. 43) and L. D. Eriksson 1984 (p. 39).

Fig. 1: *The Danish provinces c. 1600.*

For this part of the period, the achieved results are partly ascertainable by simple statistical means. But for the employment of the disparate sources of the preceding periods, severe methodological problems remain, namely those of selection and representation.

For the entire period 1150-1830, three major types of evidence have been employed: 1) normative instructions, 2) registers of landed property and 3) cases of conflicting interests. Whereas the first is covered almost totally, a significant selection has applied to the last two.[24] When it comes to local regulation, only printed editions of select village by-laws have been used.[25]

24. Danmarks gamle Landskabslove 1-8 (1932-61); Den danske rigslovgivning 1397-1513 (1989); Den danske rigslovgivning 1513-1523 (1991); Danske Recesser og Ordinantser (1824); Corpus Constitutionem Daniæ I-VI (1887-1918); Danske Lov 1683; Chronologisk Samling af de kongelige Forordninger og aabne Breve Forst- og Jagtvæsenet i det egentlige Danmark angaaende (1836); Dansk skovbrug 1710-33 (1993); Chronologisk Register over de Kongelige Forordninger og Aabne Breve … (1777-1840).
25. Danske Vider og Vedtægter; H. H. Jacobsen 1977.

The selection of sources has mainly been actuated by two factors: their prospective relevance and their accessibility. In a long-term investigation it is clearly impossible to bring to light all relevant material. Hence, especially for the medieval period, the matter of publication has had an obvious significance. As a consequence, the pre-1401 period is better recorded than the following centuries since a complete edition of medieval documents until this date exists.[26] For the period 1401-1513 a total record of existing letters (originals as well as transcripts) is however available.[27] So the real change first appears later in the sixteenth century, when the number of private and official letters reaches a level which renders a total engagement impossible. For the period 1523-1654 registries of letters from the Royal Chancellery have been employed.[28]

Especially for the earlier part of the research period, legal sentences are rather unevenly preserved and the employment of this valuable type of evidence has been correspondingly irregular. Various editions of collected sentences as well as printed legal records have been used whereas no use has been made of the thousands of regional and national manuscript records preserved from the seventeenth century and onwards. The only exception applies to the Supreme Court Records for the periods 1537-1699 and 1810-30.[29]

Neither property transition nor laws on mortgages and pledges have been examined although they are in general both prominent legal issues during the entire period.[30] That would have extended the limits of the investigation. Pre-1700 evidence is in general cited literally whereas later documentation is cited in modern orthography.

Many sources for the practical assertion of property rights originate from property conflicts, i.e. from cases where alleged rights were not respected. Everyday compliance with complex, customary rights have produced virtually no written sources. So the object of our investigation is in fact a negative picture. In some respects, conclusions can only be drawn by indirect evidence and reversed reasoning.

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26. Diplomatarium Danicum Series 1-4.
27. Repertorium Diplomaticum regni Danici 1st Series vol 4, 2nd Series vol 1-9.
28. Kong Frederik I's danske Registraturer (1879); Danske Kancelliregistranter 1535-50 (1881-82); Kancelliets Brevbøger 1551-1654 (1885-2002) has been utilised by means of an electronical database on 'forestry entries' established by cand. silv. Øivind Borggreen.
29. Kongens Rettertings Domme 1595-1604 (1881-83); records of the periods 1537-1660 and 1661-99 have been employed by means of electronical databases established within two research projects and kindly made available for me by Jens Christian Vesterskov Johansen. The material has now been published as Kongens Retterting 1537-1660, D. Tamm (ed.), København 2003. The 1810-30 protocols are found in Rigsarkivet, Højesteret.
30. E.g. E. Ladewig Petersen 1963-66.

Ideally, a cardinal question in most historical investigations must be that of representativeness; i. e. the power of a sample of evidence to describe and explain general conditions or at least to assess their scope.[31] So it is, too, in the present survey. In praxis, however, it often proves extremely difficult to determine the sustainability of conclusions with any certainty.

The demand for 'generality' is varying among different historiographic trends.[32] During recent years, an allegedly 'new cultural history' appears to challenge or maybe rather consciously disregard exactly this problem.[33] Still, this investigation can clearly not serve as 'micro history'[34] neither in subject nor in theoretical inclination.

By a largely casuistic investigation it naturally remains impossible to validate the scope of all results. In reality, all that can be done is descriptively to embrace by means of examples the conceptual field in which property rights were formulated. Written law, naturally, did constitute a universal validity (within the given geographical confines). But, as jurisdiction reflects just one aspect of property rights formulation, it is still impossible to determine its relative importance as compared with other conflicting perceptions.

Rather than endorsing the motley stock of 'cultural histories', the present work is inspired by the concurrently formed movement of 'environmental history' although it cannot serve as such itself. When stripped of its oftentimes rather fashionable appearance, this trend is expected to address 'three clusters of issues'.[35] The first deals with interpreting the historical organisation and function of nature. The second attends to the interaction of socio-economic factors and the environment. And the third focuses on the changing mental and intellectual appropriation of (man's relation to) nature. Hence, environmental history *sensu stricto* is rather expected to deal with all of these three clusters in their interrelation and totality. In this respect, environmental history employs the quest for *histoire totale* characterising much structural history in general and parts of the French Annalesschool in particular.[36]

In the present book – as is also typical for much environmental history – man will be in focus rather than his environment.[37] Hence, the structure and dynamics of the cultural landscape will only be dealt with in a summary manner.

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31. K. Kjeldstadli 1992, pp. 231 ff.
32. G. Iggers 1997.
33. An impressive overview of this historiographic field is given in P. O. Christiansen 1999.
34. C. Ginzburg 1993.
35. D. Worster 1988.
36. G. Iggers 1997, pp. 51 ff.
37. J. Radkau 1994.

The book consists of five parts. The first deals with property rights theories in general and more specifically with both positive and negative appraisals of common property. It furthermore develops the particular problems caused by woodland property. The next three parts form a chronological advance.

Part II gives a rather condensed outline of what, from a historian's view, must serve as the starting-point. Despite the fact that property and use rights might have varied continuously throughout prehistory, medieval sources serve as the first means to describe woodland property in some depth. Part III deals with the common forest rights pertaining to those parts of the medieval and early modern periods that were most manifestly feudal. And Part IV describes the final dissolution of common rights in favour of individual property. Finally, Part V serves as conclusion.

In order to make the exposition intelligible to readers with little or no knowledge of Danish history in general, each of the three main parts of the book begins with a brief introduction to the respective epoch (chapters 5, 8 and 16).

Chapter 2

The woodland history of Denmark – in brief

The geographical setting

Denmark of the investigation period extends from 54° 34' to 57° 45' North and from 8° 05' to 16° 02' East and is located in the temperate, deciduous forest zone.[1] Broad-leaved forests are accordingly considered its climax vegetation, but ever since the Neolithic (*c.* 6000 BP), man has modified the woodland dominance. Browsing wild and domesticated herbivores, the gradual cultivation of farmland, the diffusion and extension of settlements and the fulfilment of varying demands for timber and fuel have reduced and reshaped the pristine woods.[2]

The basic soil conditions have been cardinal to the Holocene plant geography.[3] Only parts of the area were covered during the last part of the Weichselian Glaciation.[4] Through its progressive and regressive movements, the ice moulded the pre-existing surface with its own geological deposits, shaping the landscape in lateral moraines and undulating moraine plains. The south-west part of the country remained outside the glaciation and was consequently formed by its outwash.

As a result of this landscape formation, young moraines with varying mixtures of clay and sand today dominate the islands and the eastern and northern parts of Jutland.[5] In western Jutland, the outwash plains are characterized by coarse sandy soils whereas the old moraines have a mixture of sandy and clayey sandy soils. Finally, large parts Northern Jutland (Vendsyssel) consist of raised floors from the Yoldia and Littorina Seas dominated by fine sandy or organic soils. The south-west part of the now Swedish provinces east of the Sound is characterised by moraine clay, whereas the north-east part is sandy.

On a regional scale, climatic variations may also have contributed to diversities in plant geography.[6] Furthermore, changeable conditions of growth for various forest

1. K. Rubner 1960; Det levende Danmarkskort 2001, digital map 1:50.000.
2. S. T. Andersen et al. 1983.
3. S. Ødum 1968; P. Vestergaard & K. Hansen 1996.
4. Danske Jordarter; B. E. Berglund 1991.
5. A. Clausen 1994.
6. M. Køie 1980, pp. 235 ff.

tree species could be attributed to long-term climatic changes. The most significant spatial differences are a variation in mean summer temperatures from 16°C on the north-west coast of Jutland to 17°C on the east coast of Zealand and a mean annual precipitation ranging from 800 millimetres in Central Jutland to *c.* 500 in coastal areas.

The temporal climatic variation of the latest millennium is dominated by the so-called 'Little Ice Age'.[7] Commencing in the fourteenth century, it reached its climax *c.* AD 1600 after which it ceased during the early nineteenth century (at the latest). This well-documented climatic development has been employed in several attempts to explain the course of history.[8] It is however difficult to ascertain to what extent it influenced natural woodland history. Lately, Bradshaw & Holmquist have emphasised the general impact of climate on vegetation history.[9] One further consequence of the temperature reduction up to *c.* 1600 might have been the general decline in tree fructification that appears in numerous pannage records of the sixteenth and seventeenth century.[10]

Forests and forestry today

When the latest official statistics on forests and forestry were produced in 2000, woodland made up 486,000 hectares or 11.3% of the present country's total acreage.[11] This total embraces no less than 25,000 individual woods and the predominance of small woods is distinct. The mean size of all woods is 20 hectares, but the variation is substantial. Taking the county averages alone, Copenhagen County with 102 hectares has the highest figure whereas Sønderjylland's County with only 12 has the lowest. Skåne has 23% of woodland.

About 45% of all Danish woodland is today private property, whereas 31% belongs to either the state or clerical or municipal institutions. The rest is divided among companies, foundations and various associations. The greatest preponderance of private property is found in Funen's County (73%), whereas State Woods totally predominate in the counties surrounding the capital.

Approximately two thirds of the entire woodland area (west of the Sound) consists of coniferous exotics, the dominant species being Norway Spruce (*Picea abies* L. Karst). Beech (*Fagus sylvaticus* L.) covers 17% and oak (*Quercus robur* and *Q. petraea* L.) 7% of the total.

7. J. M. Grove 1988.
8. See e. g. H. Lamb 1982; G. Utterström 1988 (1955); F. Mikkelsen 1983.
9. R. Bradshaw & B. H. Holmquist 1999.
10. B. Fritzbøger 1990B.
11. Skove og plantager 2000. Landbrugsstatistik 1998.

Timber for industrial and building purposes constitutes the most important forest product, even though the relative significance of fuel wood has increased since the oil crisis of the 1970's. The export of Christmas trees and ornamental branches of conifers generates considerable revenues but considering its short production period is mainly conceived as an agricultural production.

The majority of the area's present woodland area is secondary.[12] Hence, it has not been continuously dominated by trees since the immigration of plants after the termination of the latest ice age. Following periods, short or long, dominated by grassland, moor or arable, they are the results of vigorous planting campaigns during the nineteenth and twentieth centuries, in which exotic species were widely employed. So the woods of the investigation period must generally be expected only vaguely to resemble present day woodland.

Colonisation, succession and deforestation

The Weichselian Glaciation made a definite break in the landscape history of Northern Europe. Its termination some 11,000 years ago was followed by the gradual immigration of plant and animal species from retreats in the south.[13] Among the trees, rapid and effective colonisers such as birch and aspen came first. Later followed pine, then hazel, elm, oak, alder and lime. So various combinations of oak, lime and pine, according to local soil-conditions, characterised the wooded landscape until the Neolithic.

Arable farming and animal husbandry initiated a gradual woodland dissolution some 6000 years ago. Beech arrived from Southeast Europe some time during the Bronze Age, but it was not widely disseminated until *c.* 11-1200 BC. From then on, beech was the dominant tree species in most woods on fertile ground until the increase in planting of conifers during the nineteenth century. The current and covertly romantic[14] idea that oak was predominant until the nineteenth century[15] is unsupported and erroneous.

During the same period, the total woodland cover experienced a momentous reduction. As in other parts of Europe, this lengthy process of deforestation was, however, not necessarily one of 'unrelieved decline, neglect and destruction'.[16] Pollen data suggest that a discontinuous forest development characterised large areas since

12. As defined by O. Rackham 1980, p. 7-10.
13. B. Aaby 1994; K. Aaris-Sørensen 1988.
14. S. Daniels 1988, pp. 57 ff.
15. E.g. E. Worsøe 1986, p. 48; T. Kjærgaard 1994A, p. 2.
16. O. Rackham 1980, p. 1.

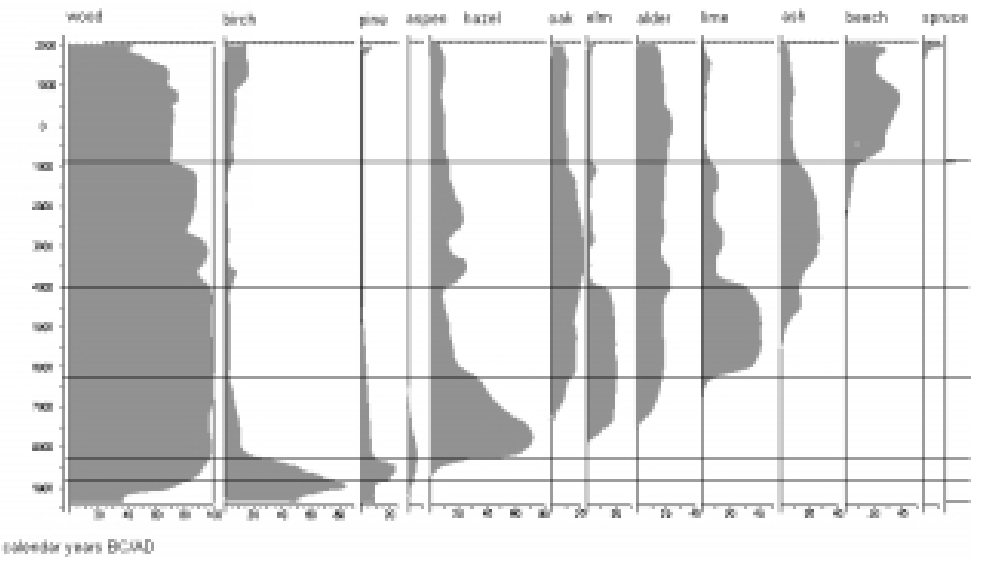

Fig. 2: *Generalised pollen diagram incorporating areas with clayey soils in eastern Denmark. No major forest re-growth c. 1350 is recognisable in this diagram. Drawn by B. Odgaard, Institute of Geology, University of Aarhus.*

the first attempts to convert woodland to arable or pastoral 'savannas'.[17] Central Zealand, for instance, kept its original woodland features for millennia whereas Southeast Jutland experienced alternating periods of deforestation followed by reforestation until the final wave of reduction during the later Iron Ages.

Hence, whereas Neolithic deforestation was in general modest, the later prehistory encountered a notable spatial differentiation. From *c.* 3000 BC, open forest pastures of West Jutland were gradually converted to still more dominating moorland maintained by burning.[18] The extent of *Calluna* moors reached its maximum during the seventeenth century. In eastern Denmark, a concurrent fragmentation of the forest gave way to agriculture and settlement. So, by the early Middle Ages, trees made up approximately two thirds of the generalised pollen sum indirectly expressing the plant cover of fertile soil types.[19] But the regional differences were significant.

Regional pollen diagrams suggest a significant deforestation in connection with the demographic and economic expansion of the twelfth and thirteenth centuries followed by reforestation as consequence of the fourteenth century demographic collapse. The succeeding centuries were all characterised by repetitive currents of

17. B. Aaby 1994; the application of the term 'savanna' on European landscapes: see O. Rackham 1998B.
18. B. Odgaard 1994.
19. R. Bradshaw, J. M. Hansen & P. Friis Møller 1999.

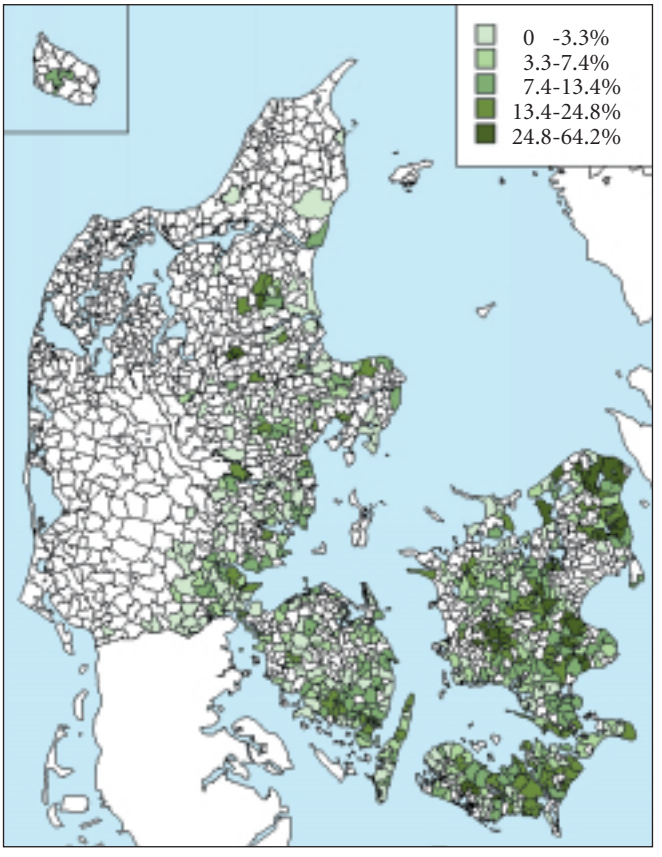

Fig. 3: *The relative woodland acreage per parish c. 1830. Data are collected from approximately 1600 land record registers and 1200 land register affiliated maps from the period 1804-44 and published by A. F. Bergsøe (1844). It only takes conserved woods into account and especially in parts of Jutland significant areas of un-enclosed woodlots are left out.*

deforestation. Noteworthy, however, is a general persistence during the economic and demographic crisis of the late seventeenth and early eighteenth centuries leading to the deforestation of the reform period.

The complex and multifunctional wooded landscapes of the open-field period were basically impossible to capture as exact cartographic representations. Still, the first nationwide series of trigonometrically based maps in scale 1:20,000 produced in 1761-1811 permit us to assess the woodland acreage *c.* 1770 at approximately 240,000 hectares or 7%.[20] Three decades later, when land reforms and speculative transactions of land had turned extensive areas of woodland into arable or grassland, the corresponding figures could be calculated at *c.* 154,000 hectares or 4%.

So Danish forests reached their minimum extent during the first decades of the nineteenth century. Several counties (*amter*) in eastern Jutland, on the islands and in Skåne had relative woodland acreages similar to present values whereas western Jutland was totally void of woods. In this region, conversion of extensive moors to

20. B. Fritzbøger 1992, p. 85 ff.

arable or coniferous plantations has propagated the most radical changes in the cultural landscape during historical times.

A very distinct regional contrast existed between the wooded areas to the east and the totally bare regions of western Denmark. Central, southern and north-eastern Zealand, Lolland-Falster, southern Funen, east Jutland and northern Skåne were still characterised by substantial wood cover whereas the whole of western Jutland and sizeable areas of Funen (the centre and north-west), Zealand (the west coast and area around Copenhagen) and Skåne (the south-west) almost totally lacked forest.

Chapter 3
Property rights

Definition

Throughout European history, definition, interpretation and support of ownership have been of fundamental importance. This applies particularly to ownership of land. An impressive bulk of literature on the subject consequently describes its philosophical foundation as well as its historical manifestations.

Since the medieval reception of Roman Law, however, the basic elements of the juridical discourse appear to have remained fairly constant, even though the conceptual accentuation has naturally varied. So instead of giving a chronological overview of the theoretical notion of property, the concept will be surveyed analytically in relation to some major property rights issues. But first a few remarks should be made about the very possibility of comprehending the realities of ownership at a temporal, linguistic and social distance.

Even if a certain degree of semantic persistence is essential to the contingency of historical analyses, concepts such as 'ownership', 'possession' and 'property rights' reflect specific historical contexts. Consequently, it would be mistaken to apply a modern, western comprehension or definition of the terms to societies distant in time and space. Contrary to the opinion of classic positivist legal science, such concepts are not universal.[1]

In most European languages, the vocabulary conveying the realities of those social relations that define the legitimate employment of natural or other resources reflects a certain ambiguity. At least three modes of distinction are discernible. Firstly, the variable **completeness of property** is expressed by the employment of different concepts. In English, for example, 'possession' is regarded as more conditional than 'ownership'. The former was explained in seventeenth century encyclopaedias whereas the latter was not (yet).[2] The same distinction applies to Sweden, where an equivalent to 'ownership' (*äganderätt*) was not employed until the last part

1. J. Pöyhönen 1984.
2. G. E. Aylmer 1980. p. 87.

of the seventeenth century.[3] In Denmark, *ejendom* (property) had already appeared with its particular meaning (of a certain landed property) in the fifteenth century, whereas its abstract signification (property rights) seems at that time to have been unknown.[4] Medieval evidence in general applies genitive or pronominal forms when describing a relationship of possession. The provincial laws, for example, have 'his own' (hans eghit) and 'his thing' (kost sin).[5]

The corresponding German term *Eigentum* appears for the first time in the thirteenth century, when it was mainly engaged as contrast to 'fief',[6] and an early fourteenth century diploma correlates it with the Latin *proprietas*: '"jus proprietatis" in the vernacular called "eygendom"'.[7] In the late Middle Ages, the concept *Besitz* was, however, far more frequently used.[8] It corresponded the Latin *possessio*. Absolute terms as ownership or property are then frequently preceded by words that express the more indeterminate yet tangible features of property relations. In juridical terms such a distinction has been made since the Middle Ages between 'right in the thing' (*jus in re*) and 'right to the thing' (*jus ad rem*).[9] The first concerned ownership whereas the latter related to various (secondary) claims against the owner.

Secondly, a **semantic gradient from exclusive and individual to divided and communal property** is closely related to the varying completeness of property.[10] Most theorists regard common (and hence divided) property as incomplete. This is either because they consider it as the result of a disintegration of ideal individual property or because they – by contrast – understand common property as the immature, original stage in a historical advance towards fully developed private property. Without either of these teleological predestinations, a term like 'divided property' would be meaningless.[11]

Thirdly, distinctions have been based upon ***real* as opposed to *personal* aspects of property**: *proprietas* contra *dominium*.[12] A long legal tradition considers property as basically expressing a relation between persons and things. So a nineteenth century Danish textbook has it that 'by "possession" [...] everybody agrees to understand a certain actual relationship between a person and a thing'.[13] But in many respects the control of things through ownership might also lead to control of other people.

3. M Ågren 1995, p. 110.
4. O. Kalkar 1881, p. 443.
5. Danmarks Gamle Landskabslove 1, p. 107 (SkL 142) and 5, p. 321 (ESL 3.45).
6. S. von Below 1998, p. 6; D. Schwab 1975.
7. A. Bernhardt 1872, p. 91, n. 7a: 'jus proprietatis quod dicitur vulgariter eygendom'.
8. D. Schwab 1975, p. 66.
9. O. Fenger et al. 1982, pp. 14 f.
10. D. Strauch 1984.
11. N. Furniss 1978, p. 453.
12. D. Willoweit 1974; see however S. von Below 1998, p. 7.
13. E.g. C. Torp 1892, p. 42: 'ved Besiddelse ... ere alle enige om at forstaa et vist faktisk Forhold mellem en Person og en Ting'; I. Hont & M. Ignatieff 1983.

Property rights express power. And since this aspect of owning clearly involves the relation between state and individual, what modern jurisprudence categorises as respectively private and public law are both affected by property rights.[14] In continental jurisprudence, the real, as opposed to personal, concept of property appears to prevail whereas 'property' in the British tradition made up a part of the so-called *secular trinity*: life, liberty and property.[15]

Since an entirely consistent usage is to be found neither in English nor in Danish, *property rights* are here employed as an overlapping concept including all issues of owning. Words like *ownership* and *proprietorship* are consequently treated as more comprehensive, and *possession* and *use* are considered as subordinate features of these rights.

To embrace all imaginable varieties of property rights, it is necessary to perform a logical (and ideal) rather than historical analysis of the content of ownership in its fullest hypothetical extent. A. M. Honoré discriminately outlines 'a bundle' of different key elements, which, however, are not all placed in the same level of abstraction (fig. 4).[16]

In the history of the real world, the ideal state of complete positive private property as outlined by Honoré was never fully achieved. Historical investigations should never simply pose the question, 'Who owns?'. One should rather ask, who rightfully takes part in property rights and which rights were associated with property at different times and in differing contexts.[17]

The following concept of property, formulated by Furubotn & Pejovich, is adopted in the present investigation:

> '*... property rights do not refer to relations between man and things but, rather, to the sanctioned behavioural relations among men that arise from the existence of things and pertain to their use. Property rights assignments specify the norms of behaviour with respect to things that each and every person must observe in his interactions with other persons, or bear the cost for non-observance. The prevailing system of property rights in the community can be described, then, as the set of economic and social relations defining the position of each individual with respect to the utilisation of scarce resources*'.[18]

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14. T. Mayer-Maly 1984.
15. I. Böbel 1988, p. 32.
16. C. f. L. C. Becker 1977, pp. 18 f. The description of property as 'a bundle of rights' apparently originates either from R. H. Tawney (N. Furniss 1978, p. 451) or from Henry Sumner Main (J. Goody 1962, p. 285).
17. J. Goody 1962, p. 287; U. Rosén 1991, p. 262; M. Brocker 1992, p. 396.
18. E. G. Furubotn & S. Pejovich 1972, p. 1139.

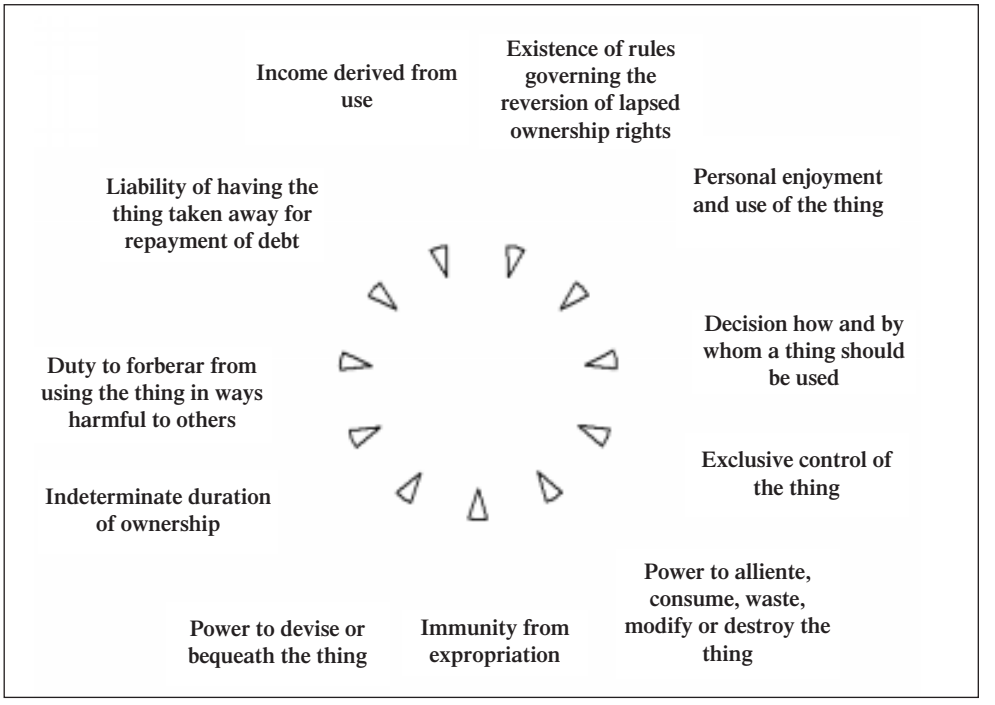

Fig. 4: *The principal content of property rights according to A. M. Honoré.*

Only, one could add, the implied scarcity need not be current: even anticipated deficiencies appear to induce property relations.[19]

In a predominantly rural society, the possession and utilisation of land and other natural resources outdo all other kinds of property.[20] Several theoretical works debate the special character of land ownership as compared with possession of tangible property. And it is broadly believed that individual, private property first developed in relation to the latter.[21]

The founder of social liberalism, John Stuart Mill, stated that 'when the "sacredness of property" is talked of, it should always be remembered that any sacredness does not belong in the same degree to landed property. No man made the land. It is the original inheritance of the whole species'.[22] Within the liberal tradition, the theoretical questioning of the legitimacy of private land ownership appeared in several European countries.[23] But as a political issue it reached its provisional peak with the

19. L. Becker 1977, p. 6; S. Pejovich 1990, p. 3.
20. E.g. R. Blickle 1988, p. 87.
21. E.g. M. Bäärnhielm 1983, p. 59.
22. C.f. T. A. Horne 1990, p. 255.
23. P. Grossi 1981,

ideas of Henry George.[24] His 'single tax' to absorb all speculative incomes on land was developed more or less concurrently with the more radical socialist programs. One of the declared aims of Friedrich Engels was that 'the proletariat seizes political power and turns the means of production in the first instance into state property'.[25] At the same time, however, as such anti-property ideas were being elaborated in the West, to large parts of the remaining world the very notion of land ownership was inconceivable.[26]

In a European context, at least three levels of 'land owning' subjects are discernible. 1) The large and uneven group of primary producers, which includes, for the period in question, peasants. In historical analyses, however, this highly complex social class must be further differentiated.[27] Considerable differences regarding economic behaviour, for example, must be expected between freeholders (*selvejere*) and tenants, farmers and cottagers (*husmænd*) etc. 2) Local or regional recipients of miscellaneous rents; i.e. mainly landlords and clerical institutions. And finally, 3) all kinds of centralised state organisations depending upon tax revenues and defining the legal framework of property relations. Frequently, such organisations consisted of several layers.

In Germany then a tradition for multi-layered forest property is reflected in medieval and early modern forest legislation. Central authorities decreed royal *Bannordnungen*, from the sixteenth century regional princes issued *Forstordnungen*, landlords made seigneurial *Waldordnungen* and finally peasant communities adopted common *Weistümer*.[28] The latter were largely compatible with contemporary French *coutûmes* and reflect rural wood commonages in their relations to the surrounding society.[29]

Historically, property rights are expressed in abstract terms of claiming possession. If undisputed, the rationale behind the contention of ownership in these cases will, however, normally be unknown to posterity. Only when property conflicts lead to legal cases are the basic principles sometimes formulated in the outline of juridical arguments.

In the present survey, however, the intellectual history of theoretical and philosophical perceptions of property rights is of limited interest. This analytical level will only be employed to the degree in which property rights theories are applicable as

24. R. Schlatter 1973, pp. 264 ff.
25. Marx-Engels: Werke 20:261 (Anti-Dühring, 1876-78): 'Das Proletariat ergreift die Staatsgewalt und verwandelt die Produktionsmittel zunächst in Staatseigentum'; G. Gräser 1966, p. 62.
26. R. Schott 1987; S. Hagberg 1995.
27. E. Wolf 1966; J. Ennew et al. 1976-77.
28. K. Mantel 1965.
29. A. Timm 1960; C. Vigoroux 1943; M. Devèze 1966.

tools to analyse legislation and legal practice. How to interpret property conflicts formulated in legal terms constitutes, however, a real problem. For example, are authorities attested by written law more righteous than those based solely upon custom? And how should we interpret agrarian custom that 'was never fact. It was ambience'?[30] Are such discrepancies to be interpreted solely in judicial terms just because that was the perspective of the source producers?

Since 'the essence of private property is always the right to exclude others',[31] the assertion and maintenance of power is an incorporate part of it. In all societies with a restricted state apparatus, the disposal of physical power is the definitive warrant of actual possession. In the Middle Ages there was, for example, a close interdependence between the political power of a feudal lord and the extent of his lands.[32]

Furthermore, the enforcement of property rights in itself forms an exhibition of power. Accumulation and transfer of property rights is seen to constitute or consolidate relationships, re-enforce social bonds or exert influence.[33] Max Weber described this as 'consumptive property'.[34] Property rights struggles can, therefore, appear to serve as a proxy for even more fundamental conflicts.

Contending private property

Historically, *property rights* have incorporated quite a range of both real and personal relations. But the arguments used to support this bundle of rights have changed. Not surprisingly, the most vehement attempts to validate the right to own were formulated by those who did so. For that reason almost all theories of property rights are, in fact, theories of private (i.e. individual) property. The effort to convince has been left mainly in the hands of philosophers and legal theorists, and since the seventeenth century an impressive mass of property rights theories have come into existence.[35] As the hypothetical originality of common property was universally acknowledged (see pp. 30 ff), one of their main concerns was to explain (and sustain) the historical abrogation of this perfect state.

Morris Cohen discerns four fundamentally distinctive kinds of argument:[36] 1) **'The occupation theory'** or 'theory of possession' based upon 'the assumed right of the original discoverer and occupant to dispose of that which thus became his'. 2) **'The labour theory'** according to which 'everyone is entitled to the full produce of

30. E. P. Thompson 1991, p. 102.
31. M. R. Cohen 1967, p. 46.
32. N. Elias 1976, vol. 2, p. 83.
33. D. J. Siddle 1995.
34. N. Furniss 1978, p. 460.
35. For a general overview, see R. Schlatter 1973.
36. M. R. Cohen 1967, p. 49 ff; a largely similar quadruple division appears in L. Becker 1977.

his labour'. 3) **'The right to freedom'** arguing that, 'to be free one must have a sphere of self-assertion in the external world. One's private property provides such an opportunity'. 4) **'The economic (or utilitarian) theory'** founded upon the expectation that private property promotes maximum productivity.

Of superior importance, however, was the prevailing presumption that property was 'natural'. This had fundamentally been the interpretation of classical thinkers like Aristotle, too.[37] In this context, 'natural' means both 'original' and 'perfect'.[38] So to Marcus Tullius Cicero natural law was 'right reason in agreement with nature; it is of universal application, unchanging and everlasting'.[39] It existed, so to speak, outside (and therefore above) history.

The basis of the Christian conception of the 'natural character' of property rights was God's assignment to Man of the collective dominion of all creatures in Genesis.[40] Individual property, however, abolishing the natural community was conceived as a result of man's Fall and basically unnatural.[41] To Martin Luther, Natural Law was simply identical with the Ten Commandments, but his basic conception of property rights was utilitarian.[42]

In later times, psychological aspects of 'human nature' seem to have replaced the confessional ones.[43] So the core of the apprehension of property as natural rights is the establishment of self-interest and is, therefore, closely related both to utility and to personal freedom. As articulated by the German forester, August Bernhardt, 'it is in man's nature that he will not treat prudently possessions in common ownership shared with a large number of others'.[44]

In contrast to the 'natural rights' view, several authors have claimed that the actual emergence of property was not natural but based upon conventions; i.e. man-made. Initially, this was formulated in the third century BC by the Stoics and later by Saint Augustine, but the relationship between nature and convention was always ambiguous. The influential thoughts of John Locke, for instance, reflect substantial elements from both trends.

The delicate question of state (convention) *versus* individual (nature) was of cardinal importance here. So the Restoration protagonist, Thomas Hobbes, claimed

37. I. Böbel 1988, p. 27.
38. R. Schlatter 1973, p. 10.
39. R. Schlatter 1973, p. 21.
40. I. Böbel 1988, p. 29.
41. R. Schlatter 1973, pp. 33 ff.
42. R. Schlatter 1973, p. 90; I. Böbel 1988, p. 30.
43. C. F. Graumann 1987.
44. A. Bernhardt 1872, p. 209: 'Es liegt in der Natur des Menschen, dass er ein Gut, welches er gemeinschaftlich mit Vielen benutzt, nicht streng wirtschaftlich behandelt'.

that property rights were created by civil law and as such subjected to the state.[45] Later both David Hume and Montesquieu adopted this view.[46] When Adam Smith elaborated Hobbes' ideas about the liberal society, he however unconditionally based property rights upon the principles of natural law as formulated by the Dutch philosopher, Hugo Grotius.[47] To Smith, the state had no significance in relation to individual property.

The 'occupation theory' was most eminently applied to royal and princely demands for sovereignty.[48] It was based upon classical roots, even if elaborated by Grotius, Pufendorf and Locke.[49] Cicero's notions of property had already included the main elements of the occupation theory: 1) the idea of 'first appropriation' (*prima occupatio*), 2) the natural character of ownership, 3) the social obligation of proprietors to support the unpropertied, 4) the general state protection of ownership except when commonwealth interests were at stake.[50] To Hugo Grotius, a division among members of the community concluded original common ownership, and hereafter occupation remained the only primary mode of acquisition.[51]

The idea that the right to landed property was derived from its cultivation and hence from labour is also well known in the provincial laws of medieval Scandinavia.[52] One such law even deals with cases in which fire was destroying 'a thing appropriated by a man by his work'.[53] But John Locke was the first to lay claim to a theoretical foundation of property rights.[54] To him, what was original was not 'the right to common use' but 'the common right to use' which was accomplished by the investment of labour in items essential to man's survival.[55] Among others, Adam Smith, David Ricardo and the young Karl Marx adopted John Locke's idea that labour constitutes the right to possess.[56]

In eighteenth and nineteenth century jurisprudence, the freedom to control turned into the central constituent of property rights.[57] Based upon the assumption that private property was natural and hence prior to the formation of states, the

45. T. A. Horne 1990, p. 24 f.
46. I. Böbel 1988, p. 40.
47. T. A. Horne 1990, pp. 111 ff.
48. E. g. R. Schlatter 1973, p. 115.
49. R. Schlatter 1973, p. 235; S. von Below 1998, p. 17 f.
50. M. Brocker 1992, p. 33.
51. R. Schlatter 1973, p. 128.
52. A. J. Gurjewitsch 1978, p. 270 f.
53. Danmarks Gamle Landskabslove 2, p. 501: some texts have 'Yrkæ fangh'.
54. R. Schlatter 1973, pp. 151 ff; H. Medick 1973, pp. 75 ff; T. A. Horne 1990, pp. 48 ff; M. Brocker 1992.
55. J. Tully 1980, p. 97; on the late eighteenth century reception of Locke's labour theory of property, see J. Moore & M. Silverthorne 1983.
56. H. Gräser 1966, pp. 51 ff; U. Wesel 1982, pp. 1 f; L. D. Eriksson 1984, pp. 39 f; I. Böbel 1988, p. 44; S. Pejovich 1990, p. 19.
57. D. Schwab 1975, pp. 79 ff.

appropriation of things appeared as both manifestation and realisation of personal freedom. Friedrich Hegel sharpened this view. To him the appropriation of things as private property was considered as an important means to self-objectification and accordingly to the realisation of personal freedom.[58] The political implications of these views became evident during the French Revolution where the personal right to possess countered the right to appropriate.[59]

To the sixteenth century reformatory movements of Central Europe, private property was mainly considered as the best warrant for the functioning and productivity of both family and society.[60] In the eighteenth century this pragmatic view of private property was reinstated by David Hume who considered it as the prime means to 'promote happiness' in all parts of the society.[61] The founder of modern liberalism, Adam Smith, later adopted this key concept.[62] By the end of the eighteenth century, 'utility' had replaced 'nature' as the most broadly acknowledged basis of property.[63] The economical 'productivity incentive' had superseded all other property arguments.[64]

Most theoretical property protagonists supported *private* property. This stance, however, was not without opposition. A few articulate individuals even considered private property as sheer theft. This persuasion was allegedly etymologically substantiated by the fact that the ancient English term 'pelf' (goods) was derived from 'pilfer' (to steal).[65] The idea seems to have been formulated first by the sixteenth century German peasant leader, Thomas Müntzer.[66] Most renowned, however, is Pierre Joseph Proudhon's explicit statement that 'property is theft', yet followed by the less frequently cited addition that 'property is liberty'.[67]

In Germany, nineteenth century historians and theorists conceived the notion that a peculiarly Germanic mode of possession had prevailed during the Middle Ages. Such an *urgermanisch* form of property was allegedly characterised by common use of natural resources. This Germanic legal school was formed in opposition to the idea of the dominance of Roman Law and its total private property. But by studying common rights in contemporary and historical societies, scholars in

58. R. Schlatter 1973, p. 256; M. R. Cohen 1967, pp. 53 f.
59. G. Birtsch 1972.
60. I. Böbel 1988, p. 30.
61. I. Böbel 1988, p. 39; R. Schlatter 1973, pp. 239 ff.
62. I. Hont & M. Ignatieff 1983, p. 23.
63. R. Schlatter 1973, p. 181.
64. M. R. Cohen 1967, pp. 55 f; see also C. B. Macpherson 1975, pp. 112 f.
65. V. G. Kiernan 1976, p. 362.
66. D. Schwab 1975, p. 73; H. Hausrath 1924.
67. 'La propriété c'est le vol... la propriété, c'est la liberté', cited from D. Schwab 1975, p. 109.

both Great Britain and on the Continent developed other kinds of common rights theories that contrasted with those of private property.[68]

Those works most fundamentally opposed to private property were, however, written or inspired by Karl Marx and Friedrich Engels.[69] According to their Communist Manifesto of 1848, the political endeavour of the working classes could be summed up as 'the abrogation of private property'.[70] And even though this more radical view of private property was not very widespread until 1917, many theories comprised some kind of moderation of the 'possessive individualism' of early liberalism. In accordance with every man's natural right to the necessities of his subsistence, due consideration should be taken to those without property.[71]

In some cases, real life displayed obvious examples of such considerations. In sixteenth-century Bavaria, the maintenance of household subsistence for both landlords and tenants was, for example, treated as a fundamental right that might imperil private property rights.[72] In relation to the peasantry, these rights applied especially to timber, and 'household needs' proved to be the fundamental benchmark for provisioning peasants with wood in large parts of Europe.[73]

Cicero had already stressed this social obligation and even early liberal economists such as Adam Smith sought ways to protect those without property from the consequences of the private appropriation of originally common, God-given resources.[74] Yet, whereas property, to use terms assumed from Pufendorf, was considered a 'perfect right', charitable works were only regarded as 'imperfect obligations'.

The originality of common property

During our 700 year period the most manifest and persistent feature of property rights was the ubiquity of common rights; i.e of complementary or even conflicting contemporary rights to identical or different aspects of the same resource. The most evident example of such rights was the tenancy (*fæste*) in which the tenants held certain use rights to the land, while their master had others. During the same period, collective employment of pastures constituted another kind of commonage.

Notwithstanding its predominance, eighteenth and nineteenth century theorists considered common property as the basal bane of 'the Old Order'. Most notoriously,

68. P. Grossi 1981.
69. I. Böbel 1988, pp. 44 ff.
70. Marx-Engels: Werke 4:475: 'In diesem Sinne können die Kommunisten ihre Theorie in dem einen Ausdruck "Aufhebung des Privateigentums" zusammenfassen'.
71. I. Hont & M. Ignatieff 1983.
72. R. Blickle 1987; R. Blickle 1988; H. Neveux & E. Österberg 1997, pp. 169 ff.
73. K. Mantel 1965, p. 93; Bernhardt 1872, p. 92; H. L. Rydin 1855, p. 23.
74. I. Hont & M. Ignatieff 1983.

this applied to the common exploitation of woods. On the one hand, landlords and tenants used the same forest localities for different purposes. The lord cut the tall trees and held the right to let out pannage rights to his peasants. The tenants would typically coppice minor trees and bushes just as they exploited the woodland pasture. On the other hand, peasant woodland management partly took place within the framework of village communalism. Coppice and pasture in common woods was often regulated by village by-laws. By the beginning of the reform period, a Danish vicar declared that 'common rights are the first and most important cause of neglect of everything that might serve to conserve and foster the forests and lead to negligence and damage in every action in the common woods'.[75] But to medieval and early modern societies, the image of complete private property formed in the minds of politically biased scholars was irrelevant as anything but an ideal. And, as C. B. Macpherson asserts, the major difference between common and private property is that 'common property is created by the guarantee to each individual that he will not be excluded from the use or benefit of something; private property is created by the guarantee than an individual can exclude others from the use or benefit of something'.[76]

In numerous attempts to conceive the factual origins of ownership, common property is widely believed to precede individual ownership.[77] To some, common rights were but the aboriginal and ideal point of departure. Others, however, attempted to substantiate the actual historical existence of common rights regimes. And this frequently happened in outspoken conflict with scholars who – like the French historian Fustel de Coulanges – maintained the historical universality of private property.[78]

Karl Marx and Friedrich Engels presupposed a 'natural communalism'.[79] 'The tribal community, the natural common body, appears not as the consequence, but as the precondition of the joint (temporary) appropriation and use of the soil. […] Men's relation to it is naïve: they regard themselves as its communal proprietors, and as those of the community, which produces and reproduces itself by living labour'.[80]

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75. J. Hvass 1761, p. 371: 'Ja fællesskab er og bliver første og største årsag til efterladenhed i alt det, der kunne tjene til skovenes fredning og opelskning, og til skødesløshed og skade ved alt der forrettes i fælles-skove'.
76. C. B. Macpherson 1975, p. 107.
77. E.g. C. Kjer 1889, p. 2.
78. P. Grossi 1981, pp. 81 ff.
79. 'Naturwüchsige Gemeinwesen'. K. Marx & F. Engels 1845-46 (Die deutsche Ideologie) and K. Marx 1857-58 (Grundrisse), cited from E. Hennig et al. (eds) 1974, p. 180 & 317.
80. Marx-Engels: Werke 42:51 (Grundrisse, 1857-58): '… so erscheint die Stammgemeinschaft, das natürliche Gemeinswesen nicht als Resultat, sondern als Voraussetzung der gemeinschaftlichen Aneignung (temporären) und Benutzung des Bodens. […] Sie verhalten sich naiv zu derselben als dem Eigentum des Gemeinwesens und der in der lebendigen Arbeit sich produzierenden und reproduzierenden Gemeinwesens' (E. Hennig et al. (eds) 1974, p. 320).

And a comparable view of the primeval character of common property is widespread even in more recent literature.[81]

The position has frequently been corroborated by some nebulous remarks by the Roman writers Caesar[82] and Tacitus[83] picturing the life of their Germanic neighbours. In his account of the Gallic Wars, the former describes how the leading members of the peasant community would each year decide which parts of the arable were to be tilled and subsequently allocate them among the various clans.[84] The latter explains that an annual distribution of land according to 'social standing' took place.[85]

In general, however, both these ethnographic texts are acknowledged to be saying more about Roman society than about the barbarians surrounding it. So it is highly improbable that a total annual redistribution of land did actually take place in Iron Age Northern Europe even if such a redistribution could be considered as a forerunner of the open field system. Moreover, the *vicis* ('in interchange') of the Tacitus text might simply reflect the general temporary nature of Iron Age field distribution substantiated by several archaeological findings.[86]

Open field systems predominating in medieval and early modern arable farming in large parts of north-western Europe could be considered as vestiges of primitive communism. Still, the complex distribution of land characterising such systems has been explained in numerous ways. Firstly, as a means of distribution of risks. However, as rightly stressed by Joan Thirsk, open fields were only common in regard to pasture.[87] Collective use was not at all common when applied to the arable. She concluded that open field agriculture represented a gradual advance rather than the application of a fully developed system. Furthermore, it is now generally accepted that the common field system developed during the Middle Ages and that it consequently cannot reflect an original appropriation of land.[88]

A stimulating interpretation by the economist Carl Johan Dahlman most convincingly embraces the key elements of open field agriculture. Having established that 'the open field system is nothing but a shimmering mirage, a self-delusion of scientific minds bent on classifying all phenomena into neatly labelled boxes', he

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81. See e.g. L. D. Eriksson 1984, p. 39.
82. A. Bernhardt 1872, p. 16 f: 'separati agri apud eos nihil est nec quisdam agri modum certum aut fines habet proprios; sed magistratus ac principes in annos singulos gentibus cognationibusque, qui una coierint, quantum et loco visum est, agri attribuunt atque anno post alio transire cogunt'.
83. C. Tacitus 1963, p. 300: 'agri pro numero cultorum ab universis vicis occupantur, quos mox inter se secundum dignationem partiuntur'.
84. E. A. Thompson 1965, pp. 8 ff.
85. E. A. Thompson 1965, p. 18.
86. P. Donat 1992.
87. J. Thirsk 1964.
88. K.-E. Frandsen 1999.

concludes that the alternation between individual cultivation of multiple field strips and collective pasture on the fallow field was basically instituted in order to prevent the individual peasants from enclosure. Or, in the words of C. B. Macpherson cited above, to guarantee to each individual that he will not be excluded from the use. The upkeep of common pasture upon the fallow field was considered indispensable since to the early modern peasant, 'the assumption of increasing returns to scale in grazing is crucial'.[89]

Several objections based upon empirical research have been raised against the supposed originality of common property and the open field system as physical evidence of its existence. The Danish geographer Gudmund Hatt judged that in the early modern period 'the village community was not communistic'.[90] A conclusion he further applied to prehistory through the study of Iron Age field systems.[91] 'Danish farmers were, allegedly, more individualistic two thousand years ago than they were in the village communities of the 18th century'.[92] And Anneliese Krentzlin has opened up the possibility that regular village formations found in north-western Europe are not the result of original Germanic settlements but rather part of a longer development.[93] In all probability, then, 'collectivism and individualism are not evolutionary stages in the history of property'.[94] They should rather be considered as the poles between which the social act of 'owning' takes place.

Rather than referring to historical evidence, the theoretical idea of original common property has frequently been based upon the simple assumption that in the beginning Nobody owned. Consequently everything was – as a law of nature – common to all members of society. This was the assumption of both Cicero and Seneca, some of the first authors to address the question.[95] And they were followed by most medieval and early modern property rights theorists. Their approach, however, clearly renders difficult the justification of private property, which inevitably comes to appear as only 'second best'. This apologetic dilemma has been approached in several astute ways.

St. Thomas Aquinas defended private property as an augmentation of the natural community that was meant to benefit man.[96] And Samuel Pufendorf introduced a differentiation between 'positive' and 'negative communities'.[97] In the former, every-

89. C. J. Dahlman 1980, p. 115.
90. G. Hatt 1939, p. 6.
91. For compatible results see V. Nielsen 1984 and C. Mascher 1995.
92. G. Hatt 1939, p. 12.
93. A. Krenzlin 1959.
94. G. Hatt 1939, p. 15.
95. R. Schlatter 1973, pp. 21 ff; M. Brocker 1992, p. 30.
96. R. Schlatter 1973, pp. 48 f.
97. M. Brocker 1992, pp. 73 ff; T. A. Horne 1990, pp. 32 ff; R. Schlatter 1973, pp. 144 ff.

body held a well-defined share of that which was jointly owned. In the latter, however, everything was owned by no one but equally available to everyone.[98] To Pufendorf, the original community was negative, not positive. Hence, individual possessions – his argument goes – were appropriated from nobody.

The presupposition of the originality of common property was supported by, among other things, the ambient judgements on property and the strong propagation of the idea of community in the Bible and among the early Christian Fathers.[99] Hence, several medieval theorists considered the conversion of common rights to individual property as an effect of Man's fall. A thirteenth century poem on the Story of the Creation by the Danish archbishop Anders Sunesen states that originally 'Man could harmoniously everything relish in common, / had not the Fall him so harshly with illness inflicted; / sin it was then to claim a thing to one man belonging, / or with statute in hand to refuse to lend to another […]'.[100]

Even though most theological writings regarded common property as an ideal state, subsequent argument led most frequently to a justification of the individuation of property.[101] This long development of the gradual endorsement of private property was fully accomplished, in the case of Northern Europe, with Luther virtually 'deifying' it. He argued, for instance, that Christian slaves should stay with their Turkish master, since he was their rightful owner.[102]

Feudal relations of production

The historical epoch considered in the current survey has often been labelled 'feudalism'. As noun and as adjective, the feudal concept has repeatedly aroused heated debates.[103] It was constructed as a political antithesis during the bourgeois revolutions of the late eighteenth century and the emergence of capitalism.[104] So one of the core issues in defining and describing 'feudalism' and 'feudal societies' has always been the property relations dominating 'the old order'.

A preliminary distinction should be made between the classic *féodalité* on the one hand, and *feudalism, feudal societies* or *feudal modes or conditions of production* on

98. L. Becker 1977, p. 25.
99. V. G. Kiernan 1976, p.374; M. Brocker 1992, pp. 35 ff.
100. Translated on the basis of H. D. Schepelern's Danish translation of the Latin poem; A. Sunesen 1985, p. 102: 'Mennesker kunde samdrægtigt ved alt sig i Fællesskab fryde, Dersom de ikke ved Syndefalds Sot var engang blevet smittet; Synd det da var, om man hævded' en Ting som den enkeltes Eje, Eller med Loven i Haand den tillaans vilde nægte en anden'.
101. A. J. Gurjewitsch 1978, pp. 274 f.
102. V. G. Kiernan 1976, p. 378.
103. E.g. R. Hilton 1978; L. Kuchenbuch & B. Michael 1977; G.Bois 1984, p. 391.
104. C. Mazauric 1977.

the other.[105] The first denotes a composite of well-defined socio-political relations mainly characterising the early Middle Ages. Its essential component, according to the Belgian authority François Ganshof, is the combination of personal subjugation (vassalage) with a transition of landed property (fief), which was accompanied by a substantial ritual symbolism.[106] The range and applicability of this definition, however, proves to be rather restricted.

In contrast to this narrow definition, several authors have claimed a more general character of feudal relations that tends to include not only the political constitution but also the social relations connected with production and property. So it can even be claimed that in the definition 'the fief – the very word from which feudal is deduced – does not play a fundamental part'.[107]

Most far-reaching and influential in defining feudalism was undoubtedly Marc Bloch. In his pre-eminent analysis of European civilisation in the Middle Ages, he describes, for instance, how 'nearly all land and a great many human beings were burdened at this time with a multiplicity of obligations differing in their nature but all apparently of equal importance. None implied that fixed proprietary exclusiveness which belonged to the conception of ownership in Roman law. [...] This hierarchical complex of bonds between the man and the soil derived its sanction, no doubt, from very remote origins. [...] In feudal times, however, the system blossomed out as never before.'[108]

Bloch's broad, inclusive definition of feudalism gained many adherents, not least among historians with a Marxist background. For to Karl Marx (and Friedrich Engels) feudalism was principally considered as a 'mode of production' and as such a specific stage in the development of the division of labour and forms of ownership.[109] Most frequently cited is the declaration, which has been employed by Marxists and non-Marxists alike to certify the deterministic character of Marx's historical materialism: 'in broad outlines we can designate the Asiatic, the ancient, the feudal and the modern bourgeois modes of production as so many epochs in the progress of the economic formation of society'.[110]

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105. C. Mazauric 1977; an equivalent distinction between 'political' and 'economical' feudalism is found in K. Eder 1976, p. 114.
106. F. Ganshof 1982; c.f. even J. Le Goff 1982, p. 70; for the symbolic ritual of feudalism, see J. Le Goff 1977, pp. 349-420.
107. C. Parain 1971, pp. 14 f: 'le "fief" – mot d'où dérive le terme "feodal" – ne joue pas un rôle fondamental.'
108. M. Bloch 1978, vol. 1, p. 116
109. Marx-Engels: Werke 3 (Die deutsche Ideologie, 1845-46).
110. C. f. E. J. Hobsbawm 1964, p. 19; Marx-Engels: Werke 13:9 (Zur Kritik der politischen Ökonomie, 1858-59): 'In Großen Umrissen können asiatische, antike, feudale und moderne bürgerliche Produktionsweisen als progressive Epochen der ökonomischen Gesellschaftsformation bezeichnet werden'.

The cardinal term 'mode of production' appears in Marx's writings in (at least) three senses:[111] 1) as the material mode in which labour was organised, 2) as the social manner defining the establishment and organisation of surplus exploitation and, finally, 3) as combinations of the two. Paramount to all interpretations of the term is the relation of property to the means of production. When, however, Aaron Gurjewitsch boldly declares that 'feudal society is based upon ownership', it is obviously not ownership in the modern, capitalist sense of the word.[112] For according to le Goff 'property – as material or psychological reality – is almost unknown to the Middle Ages. From peasant to lord, every individual and every family had only more or less restricted rights of provisional possession, of usufructs'.[113]

In order to maintain a simplified property concept when analysing feudal societies, the assertion has even been made that the object of feudal property relations was not the land itself but rather the feudal surplus value, i.e. the seigneurial rents.[114] In a Danish context, the complex property relations clearly resulted in situations where more legal persons were entitled to receive different kinds of rent from a particular holding.[115] So to some people the only expression of property rights was, in fact, this revenue. Still, to define feudal property as pertaining only to the surplus value is obviously to narrow rather than to broaden the perspective.

What characterised ownership in the feudal mode of production in contrast to the capitalist mode was primarily the extra-economic power applied by landlords to appropriate the surplus product, the land rent.[116] Personal interdependence – subjugation and exploitation on the one hand and mutual help and support on the other – formed the foundation of feudal society.

To Marx, Bloch and their respective followers, then, feudal relations of society rested upon a certain conception and realisation of 'property rights'. Morris Cohen has tentatively outlined three features characterising this 'feudal concept of property':[117] 1) common property was considered as the natural form of possession, 2) property

111. G. A. Cohen 1978, pp. 79 ff.
112. A. J. Gurjewitsch 1978, p. 274.
113. J. Le Goff 1982, p. 109: 'La propriété, comme réalité matérielle ou psychologique, est presque inconnue du Moyen Age. Du paysan au seigneur, chaque individu, chaque famille n'a que des droits plus ou moins étendues de possession provisoire, d'usufruit'; see also P. Anderson 1980, p. 24.
114. O. Bernild & H. Jensen 1978, pp. 227 f; C. B. Macpherson 1975, p. 110.
115. H. H. Fussing 1942, p. 3; K. Dørum 2001.
116. G. Schäfer 1974; see e.g. R. Brenner 1976 and 1982; other Marxist trends claim feudal relations to be strictly economic (see e.g. B. Hindess & P. Q. Hirst 1975, pp. 233 ff).
117. M. R. Cohen 1967, the essay 'Property and Sovereignty' based upon a 1927 lecture; see also J. Pöyhönen 1984, p. 111.

rights were always limited in various ways, 3) private property rights included functions that today are considered to be public, e.g. seigneurial jurisdiction.

As we have already seen, most medieval theory on property rights regarded common property as the primeval and therefore ideal state. And even though this perfect archetype had been abandoned ages ago, its vestiges could be traced in the limitations of private property characterising feudal society and appearing in various forms. 'The central concept of feudal custom was not that of property but of reciprocal obligations', and what was normally questioned in legal proceedings was not ownership but rather '*seisin*' or '*Gewere*', i.e. 'possession made venerable by the lapse of time'.[118]

In a Danish context, the analogous '*hævd*' (prescriptive rights) is considered to be inspired by Roman Law.[119] In disputes among private landlords, forty years of unquestioned possession was in general regarded as sufficient confirmation of ownership. But only three years' possession (*lavhævd*) was enough to permit the holder to produce other kinds of property evidence in court.

Medieval thought was, then, directed towards opportunities of utilisation, in which social rights and obligations were closely interconnected, so the idea of total ownership was largely irrelevant.[120] The most significant consequence of the bundle of property rights characterising feudal society was the immanent tension between on the one side the fundamental right to household subsistence and on the other the landlord's pretension of superior property.[121]

The amalgamation of what was later to be distinguished as public and private functions largely originated from the double character of feudalism. Whereas the classic *féodalité* of Charlemagne consisted by definition of a delegation of state power, the bond between lord and peasant certainly embodied political relations later to be occupied by a centralised state. So the deeper impact of the confusion of public and private was a merger of political and economical relations; or rather, a different notion of politics and economics than that of nineteenth century capitalism.

The dissolution of private and public had, however, already commenced by the beginning of the early modern period. It could even be regarded as one of the constituents of early modernity. According to Richard Schlatter, the general reception of Roman Law in Germany in 1495 confirmed the passage from feudal to modern property relations in which power originating from property was clearly distinguishable from political power.[122]

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118. M. Bloch 1978, vol. 1, p.115; see also C. Kjer 1889, pp. 70 f; E. P. Thompson 1991, p. 127; D. Schwab 1975, p. 66.
119. S. Iuul 1962.
120. S. von Below 1998, p. 10; P. Holm 1988, p. 91.
121. R. Blickle 1988.
122. R. Schlatter 1973, p. 75 f.

Through the employment of Roman Law, late medieval Italian jurists attempted to systemise the highly complex property structure based upon feudal relations of production.[123] Their work was later carried on by early modern scholars resulting in a number of theoretical models of stratified property.[124] The effort was, however, hardly any more fruitful than many present day attempts to systemise complex historical phenomena in retrospect.

Property rights were installed in a hierarchical system consisting of four levels: 1) *dominium directum* ('the power inherent in an original lord, proprietor or grantor of real property'), 2) *dominium utile* ('the power of use implicit in the role of a tenant or farmer'), 3) *dominium plenum* (a combination of the preceding two) and finally 4) *usufructus* (the right to the yield).[125]

In a tenancy system such as that dominating Denmark, the tenant would typically hold the *dominium utile* whereas his lord had *dominium directum.*[126] A further subdivision in *dominium utile quod opponitur et contradicit vero dominio* (right to the yield which opposes actual ownership; i.e. where the *dominium directum* is subordinated *d. utile*) and *dominium utile quod verum directum dominium recognoscit* (right to yield applying also actual property rights; i.e. where a proper division of property rights took place) was formulated by the fourteenth century commentator Baldus.[127]

The fact that medieval Denmark was a *feudal* society has never achieved general recognition. In a facile refutation of some very rudimentary allegations of Danish feudalism made by Ludvig Holberg, Kristian Erslev in 1899 concluded proper feudal relations (i.e. *féodalité*) only to be relevant in the case of Schleswig.[128] Strongly inspired by the studies of Marc Bloch, Aksel E. Christensen in 1944 questioned this position in a subsequently published lecture.[129] He conceded that fiefs and vassalage were never important constituents in Danish society. But by broadening the concept of feudalism he reached the conclusion that in the politically turbulent years 1241-1340 'the process of feudalisation advanced so far that in this period Denmark achieved an exceedingly strong feudal character'.[130] The general peace concluded by Valdemar III and the magnates in 1360 Christensen considered to be the conclusion

123. D. Schwab 1975, p. 70 f; A. Wobst 1971, p. 32.
124. S. von Below 1998, p. 11 ff; H. Backhaus 1972, p. 79.
125. G. E. Aylmer 1980, p. 89, note 7.
126. E. g. H. Backhaus 1972, p. 79 f.
127. D. Strauch 1984, p. 278.
128. L. Holberg 1899; K. Erslev 1899.
129. A. E. Christensen 1945.
130. A. E. Christensen 1945, p. 67: '[…] feudaliseringsprocessen var saa vidt fremskreden, at det [Danmark] i denne periode fik et overmaade stærkt feudalt præg'.

of the feudal experience. More recently, Anders Bøgh has, however, emphasised that this agreement also had strongly feudal elements.[131]

Several later studies, especially those inspired by Karl Marx's elusive 'theory of history', have aspired to point out the specific feudal features of medieval and early modern Denmark.[132] When defined as a mainly rural society organised in estates with tenant farmers, whose surplus was extracted by non-economic means, feudal relations of production clearly apply to Denmark in most of the seven hundred years under investigation. As suggested by Jacques le Goff, the early modern period could in general be considered as nothing but as a continuation of the Middle Ages.[133]

From common to individual

According to E. P. Thomson, 'common rights is a subtle and sometimes complex vocabulary of usages, of claims to property, of hierarchy and of preferential access to resources, of the adjustment of needs, which, being *ex loci*, must be pursued in each locality and can never be taken as 'typical'.'[134] And since it was the aim, albeit indirectly, of most property rights theorists to consolidate the private property of those in power, they generally opposed common property, not as a prelapsarian heavenly order but certainly in its tangible, earthly mould.

The vaguely defined limits between participating co-proprietors threatened individual interests and gave no stimulus to the rational economic behaviour that was embraced in the utilitarian argument for private property. Already St. Thomas concluded in his *Summa Theologiae* that common property provides no incentive to labour and no means to settle disputes about the distribution of wealth.[135] He consequently regarded private property as a rational addition to natural law and, by extension, not contrary to it.

To several theorists, common property was even against the laws of God and Nature. This applies, for instance, to the absolutist French state theorist, Jean Bodin.[136] Modern liberals like Blackstone followed the same line of argument.[137] Feudal property relations were a corruption of nature, and the deduction of property from the sovereign was sheer fiction.[138]

The dismantling of the old (dis-)order of common property was consequently a

131. A. Bøgh 1994.
132. E.g. B. Scocozza 1977; O. Bernild & H. Jensen 1978.
133. J. le Goff 1977, p. 10; see also J. le Goff 1994.
134. E. P. Thompson 1991, p. 151.
135. I. Hont & M. Ignatieff 1983, p. 27.
136. R. Schlatter 1973, pp. 119 ff.
137. R. Schlatter 1973, pp. 164 ff.
138. R. Schlatter 1973, p. 171.

decisive feature in the eighteenth century society reforms. Private property was expected to incite the rural population to maximise production and productivity, whereas common property was regarded as an impediment to economic prosperity. Most specifically, this applied to woodland. 'Such commonage rendered the conservation of forests almost impossible and wherever it existed it furthered the decline of the forests, most notably regarding their quality'.[139]

The social relations usually defined as 'total private property' were shaped in the gradual showdown with feudalism. An increasingly unconditional definition of property was developed during the seventeenth century.[140] It was Hugo Grotius who formulated the idea of individual private property as a full perfect right with greatest accentuation.[141] But similar ideas conceived by John Locke clearly had a greater and more lasting impact.

In the substantiation of private property, early modern jurists and politicians borrowed arguments from Roman Law, whose concepts of property, at least to posterity, were regarded as absolute.[142] In its normative expressions, Roman Law defined property rights restrictedly as the right to use (*ius utendi*) and to misuse (*ius abutendi*) as well as the yield (*ius fruendi*) of an object.[143] It is however questionable if this expressed the realities of Roman society. [144] According to Marc Bloch, 'in a great part of the Roman world itself, Quiritarian ownership had been little more than a façade'.[145]

All over continental Europe during the eighteenth and nineteenth centuries, individual private property succeeded both as a political ideal and as an economic reality. Since property was considered as an ingredient of liberty, early nineteenth century liberal theorists demanded nothing less than total ownership.[146] In this transitional process, customary peasant rights were redefined as mere restrictive covenants and therefore taken over by the future owner against some kind of compensation. In legal language, the *dominium directum* was considered to be the genuine property right, whereas *dominium utile* merely was a *ius in re aliena* (right to the thing belonging to someone else).[147] This conception was to gain cardinal importance during the late eighteenth century agrarian reforms.

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139. A. F. Bergsøe 1837, p. 139: 'sådant fællesskab gjorde skovenes fredning næsten umulig og overalt hvor det fandt sted befordrede skovenes aftagelse, i særdeleshed i kvalitet'.
140. C. B. Macpherson 1975.
141. I. Hont & M. Ignatieff 1983, pp. 28 f.
142. D. Schwab 1975, p. 70.
143. I. Böbel 1988, pp. 27 f.
144. S. von Below 1998, pp. 8 ff.
145. M. Bloch 1978, vol. 1, p. 116; see also T. Nielsen 1951, p. 66.
146. D. Schwab 1975, pp. 74 f.
147. D. Schwab 1975, p. 90

Some of the key elements in the criticism of the Enlightenment Period were repeated in 1968 when Garrett Hardin, in an essay on the demographic problems of the world, focussed upon the utilisation of common property resources. In his depiction of an imagined 'tragedy of the commons', he described how in the pastoral communities of former times, where the 'pasture [was] open to all ... [e]ach man is locked into a system that compels him to increase his herd without limit – in a world that is limited'.[149] The essay aroused substantial debate, in which the author maintained his judgement. To use historical experiences with common pasture in the current economic (and political) debate on world development of the 1960's was, however, as it was bluntly put by E. P Thompson, 'historically uninformed'.[149]

Several authors pointed out that modern economic models were able to avert the worst malfunctions of so-called 'common pools'. Indispensable to these models were elements such as rational economic behaviour, a high level of information, a basic constitutional order and a considerable freedom to organise.[150] Hence from the viewpoint of social science, the metaphor used by Garrett Hardin proved obsolete. The non-distinction between open access pools and common property, however, remains current.[151]

From a historian's angle, the vivid tragedy debate basically stemmed from the indefinite nature of the term 'common property'. It was, clearly, not always a *res nullius* open to all.[152] The key factor in preventing the expected tragedy of the commons was, as coined by Kenneth Boulding, the 'comedy of community'.[153] Common ownership of natural resources was rarely entrusted to an unidentified 'anybody' but normally to an exclusive 'we'. 'Traditional commons are closely regulated by the people who live there'.[154] In fact, Hardin was dealing with 'negative commons' *sensu* Pufendorf, whereas his opponents all treated 'positive' ones.

As pointed out by the Swedish legal historian, Maria Ågren, the abolition of common rights was ambiguous.[155] Property rights expansion may pertain to different dimensions. So, even though the re-arrangement of the economic and political setting of the nineteenth century did result both in well-defined property relations and increasing state intervention, the redistribution of land brought about by

148. G. Hardin 1968, p. 20, in G. Hardin & J. Baden 1977.
149. E. P. Thompson 1991, p. 108, n. 3.
150. E. Ostrom 1977; C. A. Johnson 1993; J. E. M. Arnold 1998.
151. E.g. S. Hanna, C. Folke & K.-G. Mäler 1995.
152. C. J. Dahlman 1980, p. 22; R. P. Sieferle 1982, pp. 100 f; M. Widgren 1995, p. 8.
153. K. Boulding 1977, p. 286.
154. G. Montbiot 1994.
155. M. Ågren 1992, p. 21.

the enclosure movement could be experienced as an intimidation of customary property rights.[156]

Basically, however, the old order of political bonds made way for a society founded upon market economy. As described by Bob Bushaway, this was 'an overall transition from the ordering of relationships in what might be called customary society (that is, where there was a balance between the claims and rights of the lesser members of community, and the duties and responsibilities of the leading members in reciprocal relationship) to a new form of social order, in which the prime importance was placed upon contract, the cash nexus and where responsiveness to market forces played the major role'.[157]

The reform movement formed the conclusion of an age-long attempt to curtail common usage of natural resources. Through the preceding centuries, the ever-increasing insistence upon possessive individualism had primarily taken the form of formal pronouncements articulated in court or government. Hence, the endeavour to obstruct the spread of common property was widely expressed as a struggle between oral customs and written law.

The nineteenth century intensification of this struggle resulted in the gradual criminalisation of large sections of the rural populations. So for the unpropertied the development largely resulted in a transition 'from custom to crime'.[158] When met by expulsion from the forest, 'they could no longer refer to oral customs, which up until then had been passed down from generation to generation'.[159] In the criminal records it is possible to follow a corresponding development from conflicts emphasising 'honour' to those accentuating 'economy'.[160]

Consequently, large parts of Europe experienced a pronounced increase in forest theft during the first half of the nineteenth century. Still, the traditional 'moral economy' affected official legislation. 'Even if [forest theft] was labelled 'theft' in the laws, it was and is not even today judged as ordinary theft according to the common Statute Book. On the one hand, they were supposed to stress its illegality. On the other, they were to take into account the "morality of the action" […] since need rather than self-interest was often "the incentive for forestry theft".[161]

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156. R. Pettersson 1995.
157. B. Bushaway 1982, p. 213.
158. B. Bushaway 1982, p. 209.
159. S. Breit 1998, p. 79: ‚Sie konnten sich nur auf die bisherige Gewohnheit berufen, die mündlich von Generation zu Generation überliefert worden war'.
160. E. Österberg 1993, p. 214.
161. J. Mooser 1984, pp. 43 f: ‚Obwohl in den Gesetzen als 'Diebstahl' bezeichnet, wurde und wird er bis heute nicht wie der gewöhnliche Diebstahl nach dem allgemeinen Strafgesetzbuch geahndet. Diese sollte einerseits seine Sträflichkeit einschärfen, andererseits aber auch 'der Moralität der Handlung' Rechnung tragen, da […] „in sehr vielen Fällen" die Not und nicht der Eigennutz die „Triebfeder des Forstfrevels" sei'.

In the first century BC, Cicero had formed the prototypical theory of occupation by remarking that the state of nature was like a theatre belonging to all people in which, however, every seat was the temporary property of the first occupant. In the revolutionary year of 1848, this observation was rephrased by the French politician, Adolphe Thiers, to the effect that all seats were now occupied and that it was the occupants who had built the theatre so that late-comers had no right to be seated unless some of the former were willing to rent their seats.[162]

This edifying parable brilliantly exposes the cultural setting of the land reform period in which the young German journalist, Karl Marx, experienced the futile struggles of the peasants in the Thalfang region to preserve their customary rights to make use of the woods.[163] This was a struggle that was deeply to influence his view of private property. He defended customary rights as a potential form of opposition to unjust laws. 'Custom as a particular sphere beside the written law is only sensible when justice is adjacent to or outside the law and when custom forestalls a written law'.[164] So, property rights discourses will always be a matter of both analysis and politics.

Through the following chapters, a number of themes developed in this incessant debate over property issues will be recurrent. We shall see how all the arguments put into words by theorists were in due course employed in praxis. Rural society of the feudal *époque* relied heavily, for example, upon possession and household needs as the primary foundation of use rights. In contrast, the dual objective of liberty and utility was pivotal to the late eighteenth century reform movement. And to achieve that, the demolition of the old order was essential. So the establishment of new, lucid forms of property ownership and a whole new regime of rationality were closely related.

And so it was with the new configuration of the cultural landscape following enclosure and the introduction of German high forest management. Transformations in property rights were closely associated with wood consumption, landscape change and forestry; and in a broader perspective even with the perception of the forest.

So what we are now going on to describe – and tentatively explain – is a wide range of interconnected developments. Most conspicuously, the period firstly embraces the initial steps in the transition from feudalism to capitalism. Secondly, it represents a gradual shift from political towards economic considerations as prin-

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162. R. Schlatter 1973, pp. 235 f.

163. H. Monz 1977.

164. K. Marx & F. Engels 1978 (1842), p. 116: ‚Das Gewohnheitsrecht als eine *aparte Domäne* neben dem gesetzlichen Recht ist daher nur da vernünftig, wo das Recht *neben* und *außer* dem *Gesetz* existiert, wo die Gewohnheit die *Antizipation* eines gesetzlichen Rechts ist'.

cipal in public discourse. A moral economy was, to use an expression of Eric Hobsbawm's, replaced by a market economy. Essential to this development was, thirdly, the evolution of still more individual and clearly defined property rights. The end of the period, then, sounded the knell for common rights. And finally, during this process the expression of property rights was altered from oral or physically concrete forms to written and abstract records. In the (frequent) case of clashes of interest, this development found expression in a transition from custom to crime.

Chapter 4
Woodland ownership

Seeing the wood ...

The various descriptive terms assigned to woodland are no less ambiguous than those outlining property. Woods consist of numerous potential resources.[1] And the conceptual constituents of wooded landscapes have been modified as particular interests in these resources have changed.[2]

On the one hand, seventeenth and eighteenth century clamours for extensive deforestation uttered especially by forest rangers (*skovfogder*) and owners frequently reflect an endeavour to maintain their employment or acquire political support rather than sincere attempts to describe reality.[3] On the other, the same piece of woodland would often have various appellations according to its actual use. In northern Sweden, the Timber Wood, the Elk Wood, the Tar Wood and the Mushroom Wood were very likely to be geographically identical (or overlapping) but to appear in different temporal and cultural contexts.[4] The forest not only constituted a landscape, it was a 'taskscape' as well.[5]

In a Danish historical context, the bundle of potential woodland applications was large (fig. 5). Firstly, the trees according to size and species were suppliers of fuel and various materials. Secondly, herbs and grasses of the forest floor served both nutritional and medical purposes for humans. At the same time they formed a vital grazing resource for animal husbandry. This, however, also applied to bushes, minor trees and low branches that were browsed by both cattle and deer. So a high density of wild animals in general made the woods attractive as hunting grounds. Finally, woodland complemented arable fields. On a small scale, trees and bushes covered wet hollows, steep hills and field outskirts. And on a greater scale, areas of common

1. E. g. C. Fruhauf 1980, pp. 17 ff.
2. O. Löfgren 1981.
3. See e. g. G. Hammersley 1957; O. Rackham 1980; A. Corvol 1984; J. Radkau 1983; J. Allmann 1989; B. Fritzbøger 1992.
4. O. Löfgren 1992.
5. The concept is Tim Ingold's (1993, p. 158f).

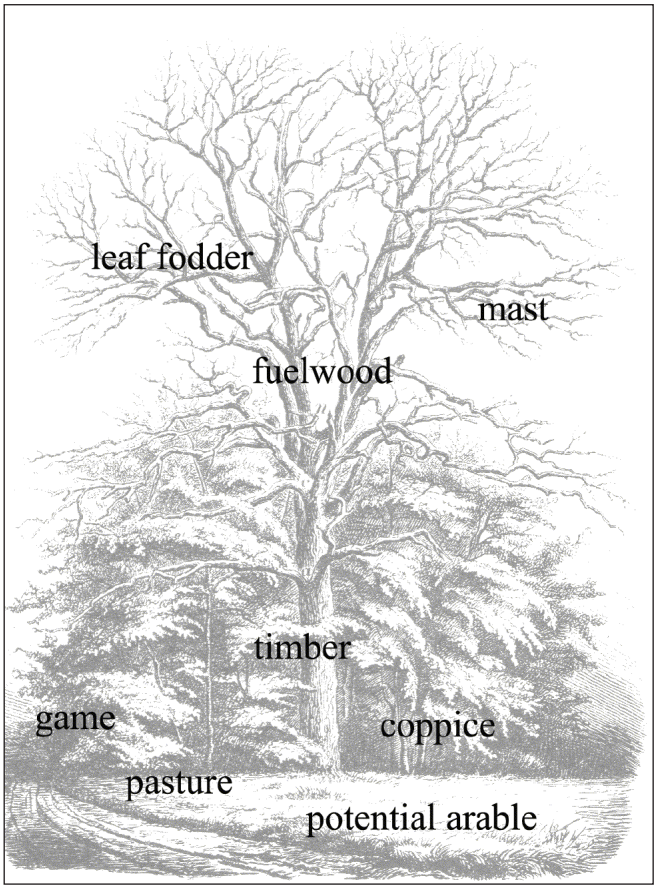

Fig. 5: *The various 'resource layers' constituting pre-reform woodland. Based upon a print in C. T. Vaupell 1863.*

pasture served as a buffer whenever arable land was extended or reduced. So woodland could also be a potential resource concerning future settlements and agriculture.

The conceptual amplitude when it comes to describing landscapes with trees does, not surprisingly, have some semantic consequences. The early medieval terminology of the Carolingian empire was applied extensively in Western Europe and in 1066 it was transferred to Great Britain.[6] In English, two terms are most frequently applied: 1) *forest* which reflects the German *Forst* and the French *forêt* and originates from the Latin *foresta* and 2) *wood* is derived from Germanic *widu* (~ Danish *ved* (wood as material)). Even though the two in modern usage are generally treated as synonyms (as they will also be in this book) their positive imports are not identical.

The *foresta* concept originally appears in the early Middle Ages. In a diploma dated AD 800, Charlemagne mentions *forestes nostras* as royal preserves and hunting

6. H. Rubner 1965, pp. 178 f.

grounds, and this remains the basic signification of the word.[7] Hence, forests did not necessarily consist of woodland.[8] The sixteenth century silvicultural author, Noë Meurer, derives the term from Latin *fera*, wild animals. Even though the etymology remains uncertain, it is more likely to emanate from *foris,* the wilderness outside civilisation over which medieval kings were routinely assumed to dispose freely.[9] But an attempt has also been made to relate it to its very opposite, namely the Roman *forum*, which obviously makes little sense.[10]

In later periods such often rather extensive areas with specified royal hunting prerogatives are well known in most of Europe. As early as the thirteenth century, extensive territories in England and Wales were considered to be royal forests, the largest being the Forest of Essex.[11] The last area to be managed as a forest (in the proper meaning of the term) was Hatfield Forest, also in Essex.[12] In France, the impact of royal forest reserves upon rural society was also substantial, even though the legislation was not quite as contentious as across the Channel.[13] So to a certain extent, woodland conservation became the unintended result of the establishment of hunting preserves.[14]

Originally, the German *Forstwesen* was also unequivocally attached to royal and princely hunting.[15] A German equivalent to 'forest' increasingly employed since the eleventh century was *Wildbann*, the prefix of which does not apply to game (*Wild*) but literally to 'wilderness'.[16] It is conceivable that the extensive royal and princely game prerogatives were conveyed to other woodland resources. As a result various degrees of royal *regalia minora* (minor prerogatives) concerning woodland utilisation seem to have been widespread in medieval and early modern Europe.[17] In Sweden, this was above all the case with the extensive commons of which the Crown claimed to be co-proprietor.[18]

The most general Latin word for wood is '*silva*'. Medieval sources, however, tend to engage a more differential vocabulary. The English Domesday Book from 1086 distinguishes between *silva* (wood), *silva minuta* (coppice), *silva modica* (probably

7. C. Higounet 1966, pp. 376 f.
8. R. G. Albion 1926, pp. 106 f; O. Rackham 1998A, pp. 164 ff.
9. E.g. P. Petit-Dutaillis 1913, p. 62; A. Hauser 1966, p. 187; C. Higounet 1966, p. 375; R. P. Harrison 1992, p. 69.
10. P. Zumthor 1993, p. 66.
11. M. Ley Bazeley 1921.
12. O. Rackham 1989.
13. R. Bechmann 1984, pp. 46 f.
14. M. Devèze 1965, p. 30.
15. A. Bühler 1911; F. Mager 1941.
16. K. Hasel 1985, pp. 60 ff; R. Kiess 1998.
17. M. Devèze 1965, p. 35 f; C. Higounet 1966, p. 378.
18. E. g. J. E. Almquist 1928; B. Boethius 1939; B. Ericsson 1980.

some intermediary form of the two first)[19], *silva pastilis* (wood pasture)[20] and *silva pastilis per loca* (wood pasture in places – apparently partly wood pasture, partly scrub).[21] Other sources mention *nemus* (grove).[22]

As these examples show, woodland was already by the beginning of the period under investigation characterised along at least three dimensions: its **use**, its dominant **structure** and its **extension**. Consequently, in Latin – and English – dynamic (use) and structural aspects (appearance) were normally intermingled when woods were described. The same applies to Danish.[23]

When asked in the 1920's about a proper definition of *skov* (or rather the Swedish equivalent *skog*), an old man from Skåne answered that 'wood is the land where the trees grow';[24] a fairly unrestricted definition, then. It was almost identical with the one expressed by the Danish-Norwegian topographer Arent Berntsen two and a half centuries earlier: 'Wood we call all those places or pieces of land where trees grow'.[25]

Consequently, every single portion of the cultural landscape, whatever its use or legal status, was considered as woodland as long as it was covered with trees. This very ample definition is, however, not immediately applicable for other periods. The provincial law of Jutland dated 1241, for example, appears to define wood by the trees alone, excluding the land on which they grow from the definition.[26]

The now classical modern definition of woodland is a composite of several elements: plant communities dominated by trees (woody, erect plants, above 5 meters in height) growing so densely as to make a common canopy. Furthermore, their acreage must induce a number of specific woodland climates and soil conditions.[27] Berntsen's broad definition – a typology based upon a combination of use and landscape context – is however more relevant in a historical investigation. The basic division into woodland types will then be based upon the attributes of wood pasture. Some woods were located upon meadows, in wet hollows and even in the grooves between the cultivated strips of the open fields. Their nomenclature is based on their attributes.

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19. In modern (i.e. nineteenth century) technical language, *Mittelwald* (middlewood) denominates a multi-layered wood, combining coppice with high forest management of standards.
20. J. McDonnell 1992, pp. 112 f.
21. O. Rackham 1980, p. 118 f; M. Jones 1998.
22. J. Tsouvalis 2000, p. 290; for a Danish example: Scriptores Minores I, p. 121.
23. B. Fritzbøger 1992, pp. 173 ff.
24. M. Sjöbeck 1927, p. 62: 'skog, det är marken, på vilken träden växa'.
25. A. Berntsen 1656, 2nd Book, p. 36: 'Skouff/ neffne vi alle de Platzer eller Støcker Land, som med Træer ere begroede'.
26. P. C. Nielsen 1980, p. 12.
27. A. Dengler 1980, pp. 11 f.

Fig. 6: *Section of manuscript map from 1792 drawn in scale 1:4000 and employed in the enclosure of the village Svansbjerg on Zealand. From the left we see a section of the partly wooded pasture originally used by the village dwellers in common with neighbouring villages but at this point separated from them (Svansbierg Overdrev). To the east of that lies a row of fenced, individual woods related to the village farms which could be either grazed or conserved for hay making or silviculture. Finally meadow strips with trees characterise parts of the arable to the right. Kort- og Matrikelstyrelsen.*

1) In woods lying in the fields, cutting, pannage and pasture depended upon the shifting cultivation of arable farming. The basic character of the 'field woods' was their lack of fencing. By contrast, even in the Middle Ages several woods were enclosed for some reason or other. 2) Such 'fenced woods' could accordingly be used as permanent pastures even as they could be conserved from browsing cattle for shorter or longer periods. Finally, some woods were located on the fringes of the village community and utilised as common grassland ('commons'). Like field woods, these 3) *overdrevsskove* (wood pastures) were generally without fences but in opposition to the former, cattle grazing was never interrupted by intervals of cultivation.

A complex resource

Compared with other natural resources, woodland is very complex. Specific interests of place and time always define its resource characteristics. When domestic colonisation of thinly populated areas is topical, the wood is widely defined as space for potential settlement.[28] If export of wooden boards is economically important, only growths of mature timber trees are considered as wood. In a European perspective, a major distinction furthermore existed between a wood production aiming at exports or specialised industrial purposes and one solely prepared to meet

28. P. Eliasson 1997.

local or regional demands. In the two instances, different sets of actors were engaged in the competition for resource distribution, and the general level of legal and political interference in the immediate property relations differed correspondingly.

Such divergent conditions are very conspicuous in the case of Scandinavia.[29] Until the sixteenth century, government policies aspired to support colonisation of thinly populated woodland regions.[30] For various reasons, the policy of the succeeding centuries was instead to protect the woodland resources of such areas. In Norway, a vigorous augmentation of timber manufacture and export to most of Europe resulted in strict mercantile regulation.[31] Meanwhile, the supply of fuel and pit props for mines and metal industries in both Norway and Sweden was partly secured by the establishment of catchments areas in which they enjoyed preferential privileges.[32] In Denmark, the southernmost and least wooded Scandinavian country, the continued local supply of fuel wood and minor timber was the principal concern of official forest policies during this period.[33]

Apart from the forest's divergent physical appearances, the general structure of society determined the setting in which the appropriation of natural resources took place. The number of socio-political levels partaking in the 'bundle' of property rights varied. In medieval Germany, forests were either individual peasant lots, commons or collective peasant woods.[34] In the early modern period, at least four levels of agents were engaged here in forest ownership: 1) Imperial legislation determined the legal framework in which forestry took place, even as the emperor held certain woods as state property (*Wälder im Reichsbesitz*), 2) local princes performed a regional regulation of forest utilisation and had their own woods (*Landesherrliche Wälder*), 3) noble and ecclesiastical manors possessed substantial woods as private property (*grundherrlicher Wälder*) and, finally, 4) tenants and freeholders employed both wood commons (*Gemeindewälder*) and enclosed peasant woods.[35]

Similar distinctions in ownership were found in many countries of mainland Europe. In Switzerland, late medieval property relations were ordered in an 'extremely rich pattern of possession, rights, restrictive covenants, seigneurial, property and jurisdictional relations'.[36] In contemporary France, five basic types of woodland property existed: 1) royal, 2) ecclesiastic and 3) secular preserves (*bans, réserves* or *défends*), 4) secular community woods (e.g. villages) and 5) individual

29. B. Fritzbøger 1999.
30. P. Eliasson 2002.
31. S. Tveite 1961; Ø. Rian 1984; T. Frygjordet 1992.
32. M. Molander 1984; G. Bladh 1997; for a similar German example, see G. Riehl 1968.
33. E.g. B. Fritzbøger 1989B.
34. K. Hasel 1985, p. 59
35. S. von Below 1998, p. 239.
36. H. Grossmann 1945, cited from S. von Below 1998, p. 239: 'Außerordentlich reiche Musterkarte an Besitztum, Rechten, Servituten, Lehen-, Eigentums- und Gerichtsverhältnissen'.

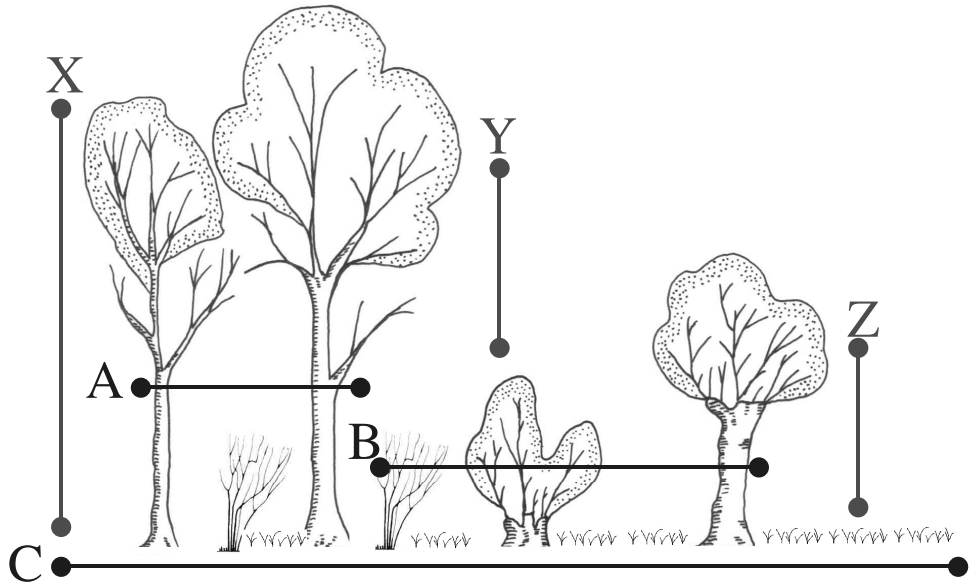

Fig. 7: *Throughout the investigation period various combinations of horizontal and vertical commonage regarding overwood, underwood or pasture existed. A) Common use of overwood trees among neighbouring landlords was normally terminated before 1600. B) Common peasant management of underwood as coppice appears to have been widespread. C) Common pasture – whether in forests or not – characterised the entire period before the late eighteenth-century land reforms. X+Y) Commonage between a landlord owning the overwood and tenants possessing underwood or pasture was the customary arrangement of feudal woodland ownership. Z) In some cases, tenants even held pasture rights in enclosed underwood parcels belonging to others.*

peasant woods.[37] And in early modern Sweden, at least three different categories of wood proprietorship existed, namely royal forests, commons and individual woods.[38] Meanwhile, the Crown held certain prerogatives to mature oak trees even on freehold land.

Various kinds of common use regarded either trees or forest pasture. A notable legal distinction concerning the woodland management of peasant communities, for example, existed in Germany. Here, the *Mark* was distinguished from the *Allmende*, where the former was used in common by several villages whereas the latter belonged only to one.[39] Even in the nineteenth century another no less remarkable difference was found in Norway, where freehold was dominant. Apart from individual property, peasants owned forest as either commons (*ålmenning*) with individual quotas or actual co-property (*sameige*) where the yield was divided among

37. M. Devèze 1965, p. 37; A. Corvol 1987, p. 28.
38. H. L. Rydin 1855, pp. 5 ff; E. Stridsberg & L. Mattsson 1980, p. 39; P. Eliasson 2002, pp. 54 ff.
39. A. Wobst 1971, p. 18.

the participants.[40] Common rights such as these were all basically **horizontal** in the sense that no geographical delimitation of individual rights to the respective resources (trees or pasture) had been made.

Secondly, there was a fundamental distinction between the unrestrained property rights of noble lords and the legally restricted rights of freeholders.[41] Wherever this distinction prevailed, the utilisation of natural resources attached to the tenure depended upon some kind of common appropriation where lord and peasant employed various natural resources (e.g. large and small trees) from the same woodland area thus constituting a **vertical** common.

In France, such a division of forest ownership was called *triage*.[42] A basic distinction was made between actual ownership (*propriété éminente*) and use rights (*propriété usagère*),[43] but from the landlord's point of view, common rights such as these constituted a restriction of his *dominium directum*.[44] Or, as expressed by Jean-Philippe Lévy, 'it rests upon the assumption that the forest was the property of the lord and that the local inhabitants held no more than a simple right to utilise it comparable with an easement'.[45]

In most of Europe there existed some similar kind of division between trees of the estate and trees of the peasant. The biblical distinction between fertile trees and infertile or dead trees was applied to medieval and post-medieval forest management, the first being a seigneurial prerogative (German: *Bannbäume*), the second appertaining to the tenants.[46]

Initially it reappears in some early medieval Germanic Laws.[47] When *Lex Burgundionum* (AD 501), for example, treats the customary right to fell trees for household needs in another man's forest, it distinguishes clearly between fertile and infertile.[48] Only the latter were to be used by strangers. In later Westphalian legislation a similar discrimination was made between '*arbores portantes et non portantes*' (bearing and not bearing trees).[49] The infertile trees were often described as dead, for instance in France (*mortbois*) and in Sweden (*dödvid*).[50] In its early form, then, the differentia-

40. P. I. Paulsen 1908, pp. 667 ff; S. Tveite 1964, p. 46; A. Vevstad 1994.
41. E.g. H. L. Rydin 1855, p. 10
42. J.-P. Levy 1972, p. 68; A. Corvol 1987, p. 55.
43. Histoire des forêts françaises 1982, p. 148.
44. E.g. for Germany: P. Blickle 1989, p. 41; for Norway: S. Tveite 1964, p. 26.
45. J.-P. Lévy 1972, p. 68: 'Elle repose sur le postulat que la forêt est la propriété du seigneur, les habitants ne possédant sur elle qu'un simple droit d'usage, assimilable à une servitude'.
46. R. B. Hilf 1938, p. 148; K. Mantel 1965, p. 74.
47. J. Grimm 1974, p. 24.
48. J. Grimm 1974, pp. 33 f.
49. J. Grimm 1974, p. 27.
50. J. Grimm 1974, p. 27.

tion of trees into two classes was primarily concerned with their fructification. Later, several designations and criteria were employed.

Directly derived from the original division was the German application of the terms *Blumware* and *Duftware* (or *Duftholz*) where '*Duft*' meant 'dust' and '*Blume*' 'flowers' or 'fruits'.[51] In this case, the porous (dusty) wood of some species is included in the distinction. These criteria become further accentuated in the separation into *Hartholt* (hardwood) – i.e. oak, ash and beech – and *Weekholt* (softwood) including alder, birch and hazel.[52]

Still other criteria for a largely similar distinction were found in the sizes of the trees. Already in the twelfth century, a distinction was made in Germany between *Niederholz* or *Unterholz* (under-wood) on the one hand and *hohe Holz* (high forest) on the other.[53] The latter, in some cases more specifically denominating trees older than eighty years, were called *Oberbäume*.[54] Sometimes written evidence even refers to the minor trees pertaining to the peasants as 'lying and under wood'.[55] An English sixteenth century equivalent appears to be 'wood' vs. 'underbrush'.[56]

In Medieval France a customary distinction was made between *gros usages* (larger usage) and *menus usages* (minor usage).[57] The first consisted of pasture, hay harvest, coppice and pannage; the second – being accessible to everybody – of leaf fodder, sticks for gathering and litter to be used as fertiliser. A similar common right to shredding and collection of dead wood existed in England.[58]

The development of woodland property

From the great diversity in property forms, it is difficult to outline general trends in the history of European forest ownership. A few common traits are, however, discernible.

The origins of forest ownership are conceived within the same discourse as the roots of property in general. Jacob Grimm and others with him considered communal forest ownership to be original whereas private property and royal prerogatives did not evolve until the Middle Ages.[59] Already *c.* 700 AD, privately owned forest lots were, however, recognised in Germany even though commons still domi-

51. J. Grimm 1974, p. 25, 59; S. Epperlein 1993, p. 39.
52. J. Grimm 1974, p. 59.
53. A. Bernhardt 1872, p. 97; J. Grimm 1974, p. 25.
54. J. Grimm 1974, p. 23.
55. J. Grimm 1974, p. 25: 'legede et uneholt'.
56. W. O. Ault 1972, p. 143.
57. R. Bechmann 1984, pp. 270 ff.
58. B. Bushaway 1982, p. 208, 213.
59. J. Grimm 1974, p. 15; A. Bernhardt 1872, p. 20.

nated.[60] The conception is furthermore questionable when common woods are not regarded as open to everyone but restricted to a well defined collective of users. Such woods clearly depended on both a substantial organisation and geographical delimitation, and this form of property was far from primitive.[61]

Since the late Middle Ages common forest ownership experienced a considerable decline. In Germany, regional princes (Landesherren) acquired the basal property rights whereas the customary rights of the peasantry were reduced to mere easements.[62] This princely assumption of sovereignty manifested itself among other things in the issue of numerous forestry codes (Forstordnungen) during the sixteenth century.[63] Meanwhile, common woods were converted to individual property by division and enclosure.[64] Constraints such as these were met with vigorous resistance during the Peasant War of the 1520's.[65]

A fairly similar development took place in France. During the Middle Ages, feudal lords appropriated most woods but their communal character was generally maintained.[66] During the fourteenth and fifteenth centuries, severe social conflicts arose from attempts by the nobles to reduce the number and rights of the users in common woods as well as the number of the woods themselves.[67] From then on, recurrent and increasingly strenuous efforts were made to further state control in all forests, royal or private. A momentary culmination was reached when Jean Baptiste Colbert issued his *Grande Ordonnance des Eaux et Forêts* in 1669.[68]

The rather uniform development from common to individual forest ownership could lead to the assumption that the selfishly industrious character of human nature was its essential incentive – exactly as property theorists of early capitalism believed it to be. An even more important underlying incentive was, however, the immanent fear of scarceness.[69] If the period under investigation was – to use Werner Sombart's expression – 'an epoch of wood', it was no less an era of anticipated wood shortage. From all corners of Europe, clamours of shortage and deforestation filled the entire period.[70]

So the development of property rights is to be conceived in a field of tension

60. A. Bernhardt 1872, p. 43.
61. A. Wobst 1971, pp. 22 f.
62. A. Bernhardt 1872, pp. 163 f.
63. K. Mantel 1965, pp. 54 ff ; A. Wobst 1971, pp. 31 ff; R. P. Sieferle 1982, pp. 95 ff..
64. A. Bernhardt 1872, p. 105.
65. K. Hasel 1985. p. 93; P. Blickle 1989.
66. M. Devèze 1965, pp. 28 ff.
67. M. Devèze 1965, pp. 46 f.
68. M. Devèze 1962; A. Corvol 1984; for an example of its local reception, see e.g. F. Vion-Delphin 1979.
69. A. Corvol 1987, p. 7.
70. For the case of England, see e.g. J. Perlin 1991, pp. 163 ff.

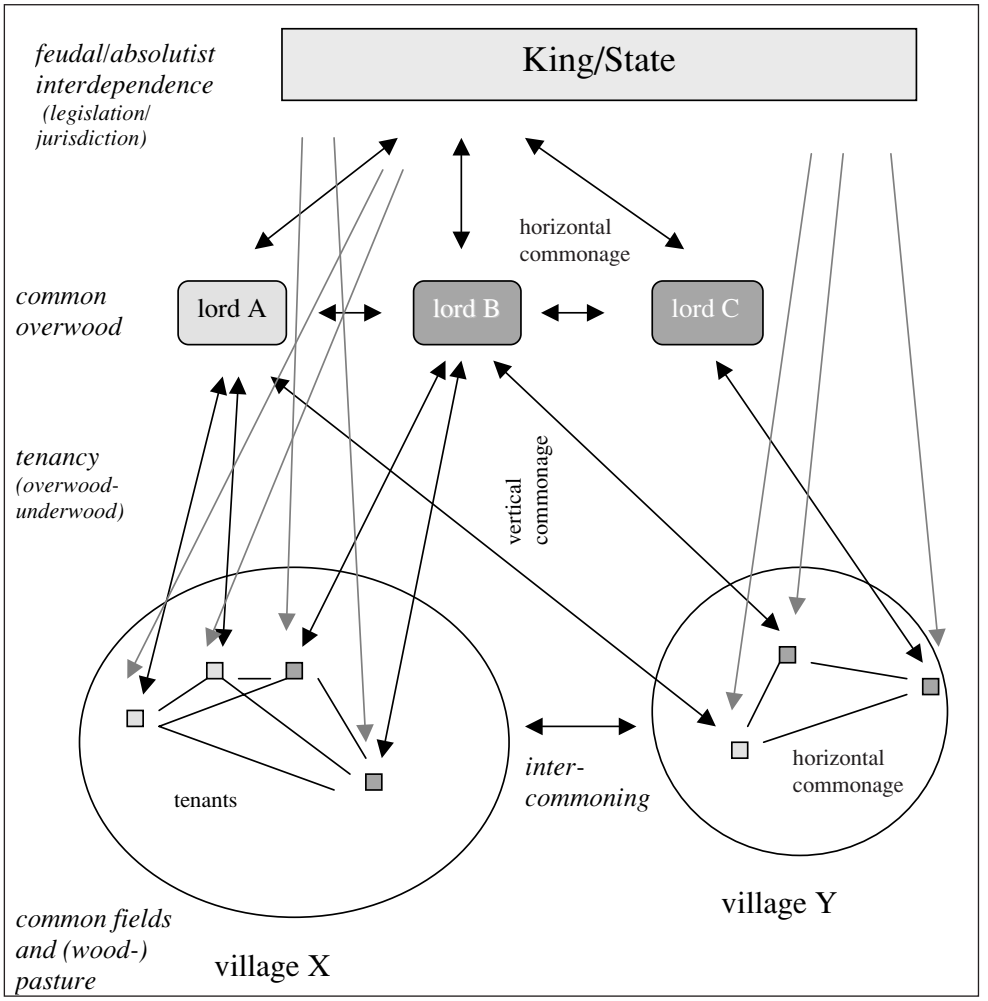

Fig. 8: *Schematic exposition of the levels, agents and types of commons engaged in medieval and early modern property rights regimes.*

between three interdependent components: actual woodland development, the menace of (foreseen) shortage and the performance of power.

The Danish experience

Various forms and aspects of woodland proprietorship are reflected in Danish historical evidence. In the following chapters, an attempt will be made to synthesize analyses of this disparate material into a description of the predominant types of property as well as of their spatial and temporal variation. Since the amount of rele-

vant information increases dramatically through time, the account of the latter proves especially difficult

A non-chronological gradient ranging from purely individual to totally common woodland property is discernible. To various degrees, however, they were all subordinated attempts at royal dominion. So the principal property agents of medieval and early modern Danish society were the crown, great land owners (church and nobility), individual peasants (freeholders as well as tenants), village communities (of peasants), not forgetting the great, indefinite 'everyone'.

At the one end of the gradient, crown, king and peasants all seem to have possessed individual woods or woodlots. Where a single possessor held all the resource components of an entire wood or fenced woodlot (*dominium plenum*), the term *enemærke* (wood close) was employed. At the opposite end, extensive areas were in the early Middle Ages still regarded as so-called *almindinger*, the access to which was open to all. In between, we find the successor of open access commons, namely wood commons affiliated to specific villages (inter-village *overdrev*) or farms (intra-village *fællesskove*).

All these simple forms of property, however, (apart from *enemærker*) only related to woodcutting. When it came to the employment of woodlands as either available space (cultivation and settlement) or pasture, each of them might have interacted with other, competing procurements.

The ensuing description of the oldest written evidence of woodland property (Part II) will begin with the open access commons, which appear to be primeval. Most evidence about these *almindinger* is, however, connected to the restriction of common rights or with the claim of royal dominion over all uninhabited lands. So the free-for-all wood commons are known only from the period and process of their disappearance.

Resulting from this lengthy development was the association of *alminding* fractions with specified settlements as *overdrev*. To this division corresponds a subdivision into one or more individual woodlots for each farm of the village. Besides manorial closes and notwithstanding their vertical division, we have here the most genuine known form of private property of the Middle Ages.

Whereas *almindinger*, *overdrev* and *fællesskove* all represent cases of horizontal commonage (as does e.g. common pasture), a new kind of vertical commonage was introduced some time during the Middle Ages. In *overdrev* and *fællesskove* as well as in enclosed tenancy woodlots, the trees were stratified according to size and species into two layers of property: seigneurial overwood (*overskov*) and peasant underwood (*underskov*).

Since fruits such as acorns and beechnuts must come from old trees (over 50-60 years), their exploitation through the fattening of pigs during the autumn – the *pannage* – was considered to be part of the lord's overwood possession. But since tenants also called for pannage as well as substantial quantities of fuel wood and timber,

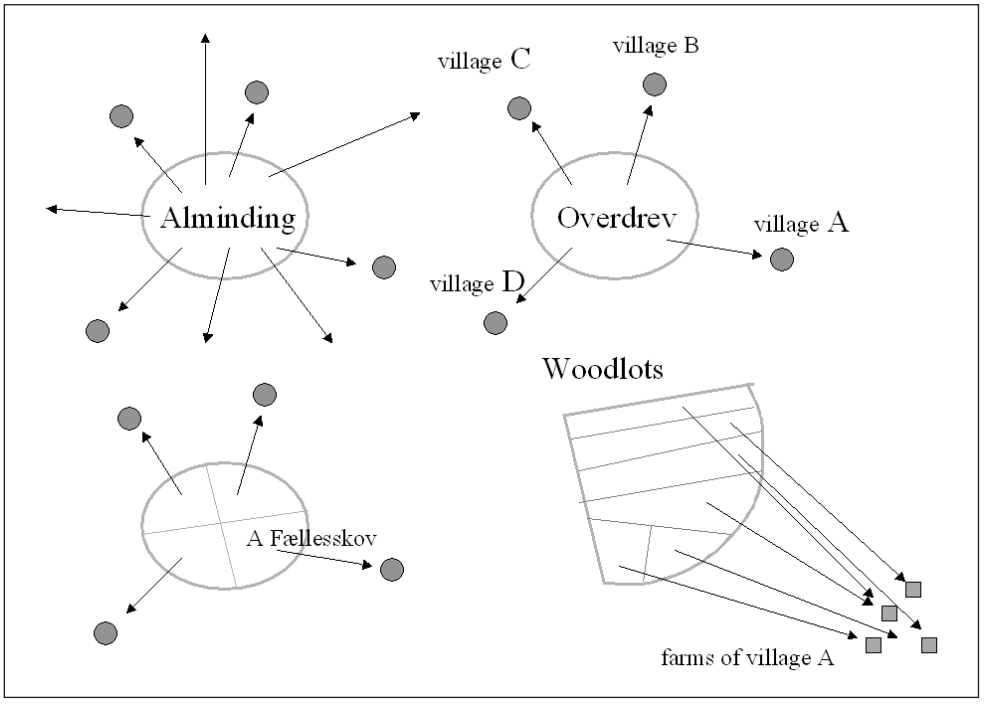

Fig. 9: *Schematic exposition of the major standardised horizontal woodland property forms of medieval and early modern Denmark. In the 'alminding', the access to use trees is open to everyone no matter to which village community they belong. In the 'overdrev', the villages and farms participating in the exploitation of the common have been determined. In 'fællesskoven' the geographical extent of the individual village woods is defined by boundaries dividing the previous 'overdrev', whereas the intra-village employment of the resulting lot remains common. The rights of each participant in both 'overdrev' and 'fællesskove' might be defined as a certain fraction of the whole but the utilisation is still common. Finally, the common village wood is divided among the participating farms thus creating a number of individual peasant woodlots. All forms of property are known throughout the Middle Ages with a general evolutionary trend from the first to the last.*

a system controlling distribution was required. So tenants were normally allowed in exchange for proper payment to their lord to let their pigs in the wood for fattening in the months before Christmas. And similarly, peasant allowance (*udvisning*) of fuel wood and timber from the estate overwood was an integrated part of feudal tenants rights.

Part II

The Medieval Origins 1150-1350

Chapter 5
Introduction

What beginning?

Even though the Middle Ages have left us both rich archaeological and artistic remains on the one hand and historical narratives, written legal texts and letters on the other, the most elementary features of everyday life and thought remain obscure.[1] Nevertheless, as was the case in the rest of Europe, the period was the first to be scrutinised during the late nineteenth century breakthrough of critical historical science. So the corpus of historical investigation into the Middle Ages is impressive.

Due to the scarce and thematically restricted source material, the entire 200-year period is to be considered as a unit, notwithstanding the obvious fact that changes did take place. So this part of the investigation will appear as a description of the somewhat static point of departure for the subsequent development of property rights. Nevertheless one would, firstly, expect that considerable dynamism did in fact characterise the period. And secondly there is no reason to believe that medieval property relations reflected the state of pre-history more than remotely. So even if the twelfth century marks the 'beginning' from a historian's perspective, it is basically a random starting point.

Building a state

The early process of forming a centralised Danish state was at its height during the 1150's. After decades of civil war originating from dynastic quarrels within the royal lineage, Valdemar the Great occupied the position as sole sovereign in 1157. Yet the evidence concerning the actual range of state power and its capacity to intervene in local matters remains highly contradictory.

On the one hand, a royal government engaged in legislation, jurisdiction and taxation is manifest in a series of normative sources. On the other, great landowners still maintained considerable self-determination. So the design of a balanced inter-

1. This chapter is mainly based upon A. E. Christensen 1977, O. Fenger 1989, K. Hørby 1980A, H. Paludan 1977, E. Porsmose 1988 and I. Skovgaard-Petersen 1977.

relationship between local and central authorities appears as the core issue of medieval politics.

In a wider geographical context, however, the Danish Kingdom carried on a policy of expansion and domination. After a hundred years of relative standstill, the Viking Age expansionism was reinvigorated during the late twelfth and early thirteenth centuries in the form of crusades against the infidel peoples around the Baltic.[2]

By the middle of the thirteenth century, severe economic problems began to weaken the position of the monarchy. An increasing, relative deficiency of financial means combined with recurrent dynastic feuds within the royal lineage as well as clashes with local prelates created a basis for political instability. The final collapse of kingship came in 1332, when Denmark experienced an eight-year interregnum with large sections of the crown lands in pawn to Holstein counts.

As in most medieval societies, the king's landed possessions determined his political capabilities and with them gone, there remained no place for the monarchy. The economic vigour of landed property was in itself an expression of power; and royal dominion could prove an effective means to collect more goods. The pre- or early medieval origins of the crown lands remain, however, fairly uncertain as does their fundamental character.

Following an age-old tradition, historians have distinguished between those lands which belonged to the king personally (*patrimonium*) and those pertaining to his official capacity (*kongelev*).[3] The basic distinction between the two should be the principle inalienability of the *kongelev*; it was intended at all times to follow the crown. The *patrimonium* on the other hand, could be divided by inheritance within the royal lineage. Furthermore, the principal foundation of *kongelev* was believed to be seizure of uninhabited (and unoccupied) areas that according to *Jyske Lov* of 1241[4] belonged to the king; we here have the *primo occupatio* argument as it was formulated by European legal theorists. Based upon an analysis of the geographical distribution of the two forms of royal possessions, Anders Andrén further conjoins the emergence of towns with the establishment of *kongelev*.[5]

Yet this whole conception appears to be largely unsubstantiated. It is evident that the two terms were applied to crown lands in the twelfth and thirteenth century. But it is unclear whether any sharp formal discrimination between the two existed, and in praxis both were equally at the king's disposal.[6] Recently, Ole Fenger has claimed

2. K. V. Jensen, C. Selch & J. H. Lind 2001.
3. E.g. K. Hørby 1980 B, p. 175.
4. Article III.61.
5. A. Andrén 1983.
6. A. Leegaard Knudsen 1988.

that the classic nineteenth century interpretation of *kongelev* presupposes a Canon Law perception of 'juridical' or 'fictitious persons' that allegedly was not accepted by secular law until much later.[7]

The financial basis supporting the establishment and sustenance of the central regal power was separate from yields and land taxes derived from crown lands. Peasant freehold constituted the principal tax base, whereas manors were exempt of taxes. And as tenants were gradually included in manorial exemption, the financial system was inclined to endorse a transition from freehold to tenancy. The reality of this transition is, however, disputable (see pp. 101f). By the gradual introduction of tithe payment, the church established a corresponding, clerical tax system.

It is commonly accepted that the first and most prominent function of kingship was of a military nature; that the king by definition acted as supreme warlord.[8] Less evident are his civilian duties and capabilities in the early Middle Ages. To what extent he participated, for example, in (or even conducted) legislation.

In his now classic introduction to Danish legal history of 1940, Poul Johannes Jørgensen states that initially the law originated 'immediately from the people' through the decisions taken at the 'thing' (*ting*). He then detects the first trace of royal legislation in a royal decree (*edictum regale*) concerning observance of church festivals allegedly issued by Knud den Hellige (Knud the Holy) (1080-86).[9] The attempt failed, and the next effort by the king to legislate does not appear until 1200, when Knud VI issued an act against manslaughter. He declares that the king gives and changes the laws. From then on, Jørgensen figures that the king in general participated in legislation. *Jyske Lov* from 1241 formulates the principle, that 'the king gives and the 'thing' affirms' the law.[10]

Ole Fenger has seriously questioned this *de facto* royal legislative competence during the twelfth and thirteenth century.[11] Essentially his view is that written, medieval legislation in most cases reflected the policies of the church. The church propagated crown jurisdiction in order to further its own interests – not least through the introduction of the principles of Canonical Law. As it is succinctly expressed, 'kings issue and give laws selected and compiled by clerics'.[12]

Overall dominant prescriptive sources for the history of medieval property rights

7. O. Fenger 2000.
8. I. Skovgaard-Petersen 1977, pp. 194 f; N. Lund 1996.
9. P. J. Jørgensen 1940, p. 15, 34.
10. Danmarks Gamle Landskabslove 2, p. 8: 'Thæn logh thær kunung giuær oc land takær with'; The 'land', i.e. the region (Jutland), is interpreted as the regional, legal representation of the land, the *landsting* (provincial court), cf. P. J. Jørgensen 1940, p. 38.
11. O. Fenger 1983.
12. O. Fenger 1989, p. 340: 'Konger udsteder og "giver" love, som gejstlige har udvalgt og sammenskrevet'; a comparable but somewhat more moderate view of king and church as early medieval legislators is found in A. E. Christensen 1977, p. 384.

are the provincial laws, which were not as geographically restricted as their labels suggest.[13] They might even be regarded as stages in an aggregate legal corpus meant to concern the entire kingdom.[14]

Four major laws exist: from *c.* 1150-1200 Valdemar's *Sjællandske Lov* (VSL), 1216-20 *Skånske Lov* (SkL) with a Latin paraphrase by archbishop Anders Sunesen (Asun), 1241 *Jyske Lov* (JL) and *c.* 1250 Erik's *Sjællandske Lov* (ESL).[15] Except for the paraphrase, they are all written in the vernacular and they are deeply concerned with property rights. Regulation of inheritance constitutes their predominant part.

Their origin in an oral tradition is clearly reflected by linguistic structures.[16] But dependence upon older written law, e.g. early Germanic legislation, Roman Law or the Law of Moses, has been intensely debated as has the question of their issue. Do they express the will of the king or are they primarily to be seen as a codification of oral custom?

The influence of Canonical Law has been acknowledged since the 1890's.[17] In this respect, Danish historiography has to some extent opposed classical German attempts to trace a specific *urgermanisch* legal tradition fundamentally countering Roman law.[18] Several authors have, however, demonstrated within the texts significant chronological developments in, for instance, legal procedure.[19]

The most determined effort to extract such older layers from the provincial laws has been performed by Ole Fenger.[20] A cardinal indication is their rules regarding ordeal by fire, which was abolished after the Fourth Lateran Council in 1215. Against this search for 'original' elements in medieval Scandinavian legislation, Elsa Sjöholm has contended that all legislation almost entirely resulted from a reception through *Skånske Lov* of Mosaic Law. The receiving *milieu* did not consist of an ancient, oral Germanic Law but at the most of personal 'norms and nothing else, which can only be used to reflect the intents and mutual relations of the originators'.[21] To her, the whole idea of a kindred based society replaced by a 'state' during the Middle Ages is nothing but a Germanistic illusion.[22]

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13. P. J. Jørgensen 1940, p. 42; O. Fenger 1991; A. Hoff 1997.
14. M. H. Gelting 2003.
15. Scholarly editions are found in Danmarks gamle Landskabslove med Kirkelovene 1-8; datings according to A. Hoff 1997 with corrections suggested by M. Gelting 2003.
16. P. Skautrup 1941.
17. L. Holberg 1891; N. K. Andersen 1941.
18. D. Tamm 1992.
19. E. g. P. J. Jørgensen 1940, pp. 24 ff.
20. O. Fenger 1983.
21. E. Sjöholm 1988, p. 250: 'vid lagstiftningstillfället är det recipierade godset normer och inget annat. Dessa kan bara användas till kunskap om upphovsmännen, deras avsikter och inbördes relationer'.
22. E. Sjöholm 1978.

In opposition to this maybe too radical view[23] – but without supporting the existence of a universal Germanic legal system covering the entire Central and Northern Europe – Annette Hoff more recently concluded that 'Danish provincial laws consist of an oral custom which was written down during the twelfth and thirteenth centuries';[24] i.e. local custom thus reflecting a local setting. Consequently, she considers it possible to discriminate between at least two chronological text layers. Still, the distinction is not without problems. Articles 168-169 of the *Skånske Lov*, for instance, hold both the traditional production of evidence and the novel Canonical precondition of intention.[25] Michael Gelting has recently prompted the hypothesis that *Skånske Lov* was in fact a summary of the legal status produced as basis for (and including) legal reform.[26] Not surprisingly, Hoff's arguments against Sjöholm are all held in notably vague terms.[27]

We might conclude that the content of the four laws was amalgamated by traditional and reformative elements all formulated in the application of European standards to the regional requirements of thirteenth century Denmark. Yet in each single instance it proves extremely difficult to determine whether an article was in fact obsolete or innovative at the time it was written down.

Legislation is, however, but one way to define rights. Legal usage is another and during the Middle Ages, the two were widely intertwined. This was why, provincial courts (*landsting*) were supposed to corroborate royal legislation.

Three issues defined the medieval and early modern *ting*: the place, the time and the people.[28] The place of the court was bound by common agreement and could not be transferred without general consent. The same applies for the time; hearings were often stipulated in conjunction with the annual festivals. Finally, the jurisdiction was limited to the inhabitants of a certain district – a village or parish, a *herred* (district, virtually identical with an English hundred) or a *land* (whole province). Apparently, the court leadership was generally entrusted to a little group of distinguished members of the community known as wise or learned men (*prudentes* or *viri discreti*).

Local courts based upon oral custom appear to have existed throughout the Middle Ages.[29] According to Erik's *Sjællandske Lov c.* 1250, village councils (*bystævner*) held jurisdiction in minor legal cases. Corresponding parish courts (*sognestæv-*

23. M. Gelting 2000, p. 134.
24. A. Hoff 1997, p. 325: 'de danske landskabslove består af en i 11-1200-årene skriftligt nedfældet, men indtil da mundtligt overleveret, sædvaneret'.
25. A. Hoff 1997, pp. 218 f.
26. M. Gelting 2003.
27. A. Hoff 1997, pp. 324 f.
28. P. J. Jørgensen 1940, pp. 243 ff.
29. E. Porsmose 1991.

ner)[30] known from numerous late medieval legal certificates might have predominated in thinly inhabited areas with a preponderance of single farms.

The social structure

It proves extremely difficult to deduce general traits regarding the social structure of medieval Denmark. What is evident, however, is its essentially seigneurial constitution. In the twelfth century, a few families and ecclesiastical institutions owned extensive landed properties consisting of several estates. Most notorious was the Hvide family on Zealand.[31]

From the pre-Christian Viking age, the tradition of employing slaves (*trælle*) in the rural economy continued during the early Middle Ages. The Baltic crusades might have ensured a steady supply, but during the thirteenth century they gradually lost importance and finally disappeared.[32] By definition slaves were considered as the private property of their masters. According to the provincial laws, they should be treated as animals and tools; this meant among other things that their owner was held responsible for any damage they might cause.

Twelfth and thirteenth century evidence distinguishes between four categories of peasants. *Villici/bryder* originally appear to have been royal civil servants.[33] In the thirteenth century, the term is gradually applied to stewards in bondage managing larger estates on behalf of their lord. And finally, *bryde* in the fifteenth and sixteenth centuries was simply equivalent with tenant.[34] *Coloni/landboer* were personally free but rented their land from a lord against the payment of annual rents. *Inquilini/gårdsæder* were comparable with the cottagers of later times, renting only a dwelling on the land of others. Finally nondescript *bondones* – meaning virtually just 'peasants' (*bønder* in modern Danish) – must denote those freeholders who played a notable part in rural society. The indiscriminate peasants mentioned in provincial laws must be considered as fundamental legal subjects or 'full citizens'.[35] In several articles the *Jyske Lov* furthermore labels them as 'owners' of various objects.[36]

The most thorough analyses of estate structures of the twelfth and thirteenth centuries concern the extensive properties of lay nobility or the church.[37] Still, the

30. P. Meyer 1949, p. 51.
31. M. Kræmmer 1999.
32. H. Paludan 1977, p. 434.
33. T. Riis 1970, pp. 8 ff.
34. E. Porsmose 1983, p. 12.
35. A. E. Christensen 1945, p. 124.
36. P. J. Jørgensen 1940, p. 190.
37. C. A. Christensen 1960-62; E. Ulsig 1968.

prevalence of large-scale production versus various forms of peasant tenancy remains obscure. Consequently, the importance of *villici* is equally uncertain. Early fourteenth century title deeds imply that the *villicus* system was fairly widespread by then.[38]

In broad terms, the social structure of thirteenth century Danish society has been delineated as follows: on Zealand a mixture of *villicus* manors with or without *coloni* and *inquilini* appears to have predominated. In eastern Jutland, manors with only *coloni* (but without *inquilini*) seem to have prevailed.[39] Altogether such large-scale estates were however most manifest among the large land-owning families and on the comprehensive church lands accumulated by donations.

So, in the form of *coloni,* tenancy was apparently quite common.[40] And what is more, the concept seems to have had a reasonably identical content during the following centuries.[41] It is widely assumed that the *villicus* system of the thirteenth century was replaced by the tenancy system dominating the ensuing period.[42] Yet the nearly landless class of *inquilini* may also have formed a major part of the post-plague demographic basis of this new system.[43]

Population, economy and landscape

It proves extremely difficult to give qualified estimates of population growth during the twelfth and thirteenth centuries. Nevertheless to most scholars the reality of this increase is irrefutable and the resulting population *c.* 1250 has been assessed at *c.* 1 million.[44]

The growth is reflected in the momentous settlement expansion resulting in some 3500 single farms or villages with the name ending *–torp* that reflects a colonial status in relation to 'older settlements'.[45] After considerable late medieval desertions some 2500 such settlements (or roughly 1/5 of the total number of settlements) still existed in the diminished Denmark of 1680.[46] Furthermore, although interpretation here is difficult, changes in the land tax system appear to indicate a general extension of arable land during the late twelfth and early thirteenth centuries.[47]

38. H. Paludan 1977, p. 417.
39. E. Ulsig 1994, pp. 106 f.
40. K. Hørby 1980 B, p. 123.
41. T. Riis 1970.
42. E.g. C. A. Christensen 1964.
43. T. Dahlerup 1972.
44. K. Hørby 1980A, p. 107.
45. K. Hald 1965.
46. E. Porsmose 1988, p. 240.
47. A. E. Christensen 1977, pp. 301 f.

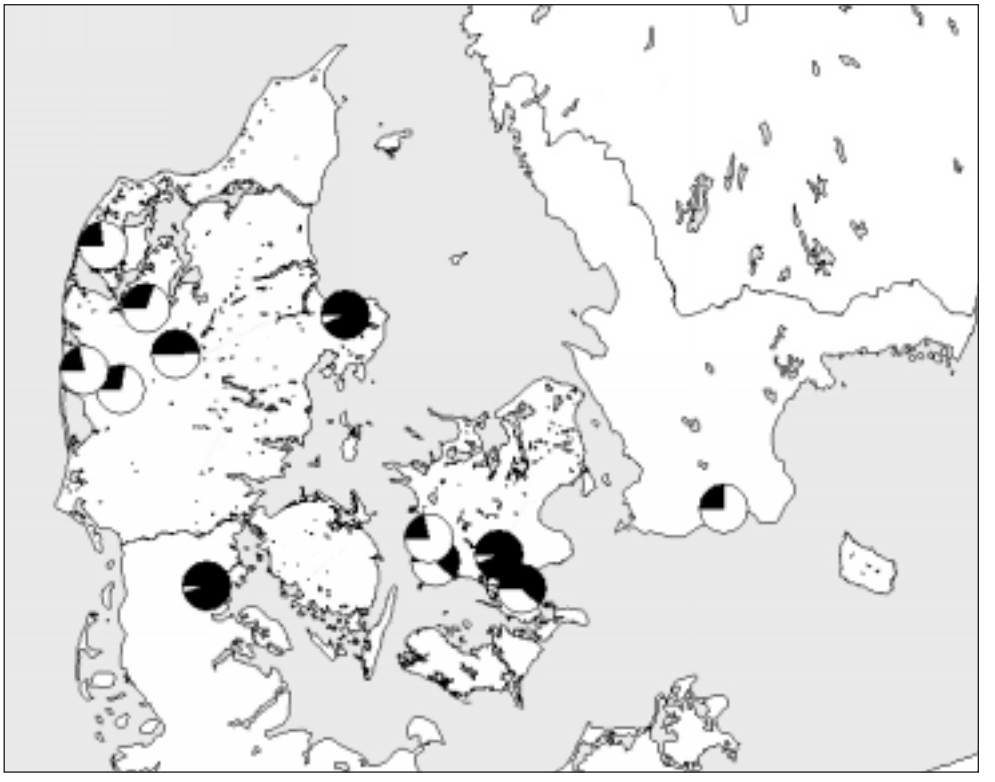

Fig. 10: *The relative content of woodland pollen types (black) in regional pollen samples dated c. 1150.*[48]

Naturally, the economical and demographic expansion resulted in deforestation. Forests were cleared to give room for arable fields and new settlements, but the overall distribution of woodland remained fairly unaltered as compared with Iron Age evidence. Northern and eastern Skåne, parts of central Zealand, southern Funen and parts of eastern and central Jutland were the foremost 'forestry centres'. But they clearly experienced a gradual fragmentation during the Middle Ages. Locally, therefore, (and maybe even on a regional scale) imminent scarcity of wood shaped the property rights discourse of the thirteenth century.

48. V. Mikkelsen 1949; V. Mikkelsen 1954; S. Th. Andersen et al 1983; B. Aaby 1983; S. Th. Andersen 1984; M.-J. Gaillard & B. Berglund 1988; B. Aaby 1992; S. Th. Andersen 1992; B. Odgaard 1994; P. Rasmussen & S. Th. Andersen 1997.

Chapter 6
Commons and closes

Alminding – an elusive concept

Common possession – *fællig* – formed an essential concept of medieval jurisprudence. In regard to laws on private property, a distinction between the common possession of a married couple and their individual goods was introduced by the time the provincial laws were fixed in writing.[1] But the fundamental relations of rural society were also dominated by common ownership.

In his Latin paraphrase of *Skånske Lov*, archbishop Anders Sunesen considers that 'if one of two persons who possess things in common claims that a thing belongs separately to his property and the other calls it common, then the one who calls it common should rather be heard if he can prove his claim by the sworn statement of twelve men'.[2] Various kinds of *de facto* condominium are then implicit in medieval texts on property rights.

The provincial laws of the thirteenth century explicitly distinguish commons from individually owned forests. The first were called *almindinger*, whereas the latter are normally referred to as 'another man's wood'.[3] Based upon the laws and other contemporary sources, *almindinger* can in general be characterised as extensive, uninhabited areas outside the limits of existing settlements. The authoritative definition goes: 'something to which no one holds any kind of special right'.[4]

In some instances, however, *almindinger* are described as pertaining to the inhabitants of a single village, parish or district just as was the case in early modern Sweden.[5] They correspond to the concept *overdrev* as employed in the present study (p. 56). The term proves to have been rather indistinct in its employment and its definition appears to have changed over time from open to defined (and hence restricted) access.

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1. S. Iuul 1940; M. Gelting 2000.
2. Danmarks Gamle Landskabslove 12, p. 654: 'Sj duorum habencium res commvnes vnus rem aliquam ad suum singulariter contendat dominium pertinere, alter e contrario commvnem affirmet, debet audiri pocius commvnem affirmans, si cum xii juramentalibus sue fidem faciat affirmacioni'.
3. I. a. in SkL 192, VSL 3.23, ESL 2.78, JL 1.53, 2.73 and 3.40.
4. P. Meyer 1956, p. 95: 'noget, hvortil ingen har nogen form for særret'.
5. E. Oksbjerg 2002, pp. 65 ff; for Swedish *almindinger*, see Å. Holmbäck 1920.

Use rights in the *alminding* were, therefore, ambivalent. In some cases they were regarded as *res nullius* (owned by no-one). *Skånske Lov* (article 208) mentions the fact that everybody, no matter where they lived, was entitled to cut trees in the *alminding* as long as they collected their haul at the latest 'a year and a day' (literally meaning one year and six weeks) later. It is however highly doubtful whether this 'everyone' included people without landed property such as farmhands and slaves. Most likely, the judicial person here as in other parts of the provincial laws was the freehold peasant.

Another article (SkL 71) mentions *almindinger* possessed jointly by the inhabitants of a specific village or by several villages. The clause concerns cases where 'men are living together in a village and they all have an *alminding* in common, wood, heath or another outfield and some want to cultivate and improve their land and others do not'.[6] Then the *alminding* should be partitioned by rope among the individuals desiring to cultivate it. In this case, the wood is owned by a well-defined group of proprietors just as was the case with all later *overdrev* (see p. 56) and *fællesskove*.

The same phenomenon is reflected in the Land Register known as King Valdemar's, the major part of which dates to the middle of the thirteenth century. It distinguishes between the *almindinger* of Skåne and Halland and the new settlements founded in them; settlements, that is, with their own well-defined woods.[7]

So in some cases the *alminding* covered outfields and was 'possessed' or dominated by no single village or groups of villages. In others the term simply designated (indistinct) commons in general. This wavering wording might reflect the transition in words and in realities from open access commons to limited commons. Or, to use Pufendorf's expression, from 'negative' to 'positive' commons.

It is, therefore, remarkable that Anders Sunesen in his paraphrase invariably employs the term 'common grove' (*nemus communis*) for *alminding*.[8] This is largely similar to *fællesskov* (common wood), the phrase used for intra-village wood commons of later centuries. So in all likelihood the interpretation of *alminding* was transformed to mirror new kinds of property during the Middle Ages.

In a later period, the term 'ordinary woods' – *allmyndige skoffue*[9] or *almendigge-*

6. Danmarks Gamle Landskabslove 11, p. 45 (text 1): 'BO MÆN I BY SAMMÆN, ok hafæ allæ sammæn almænning, skoh ællær liung ællær andræ øÞæ mark, ok uiliæ summe yrkiæ ok bætræ sinæ iorÞ, ok summe uiliæ æi'.
7. Kong Valdemars Jordebog, p. 31v: 'Sygtæsore cum ceteris uillis factis de alminning [...] Tota silua que dicitur ♦ alminning et oppida inde facta • et omnes silue adiacentes'.
8. 'Silva communes' are mentioned in both *Lex Burgundionum* (501) and *Lex Ripuaria* (633-34), C. Higounet 1966, p. 376. In a Danish context it is, for example, known in a twelfth century diploma, Codex Esromensis no. 216 (6.7.1176).
9. Repertorium Diplomaticum regni Danici Mediaevalis II, no. 6742 (17.6.1490).

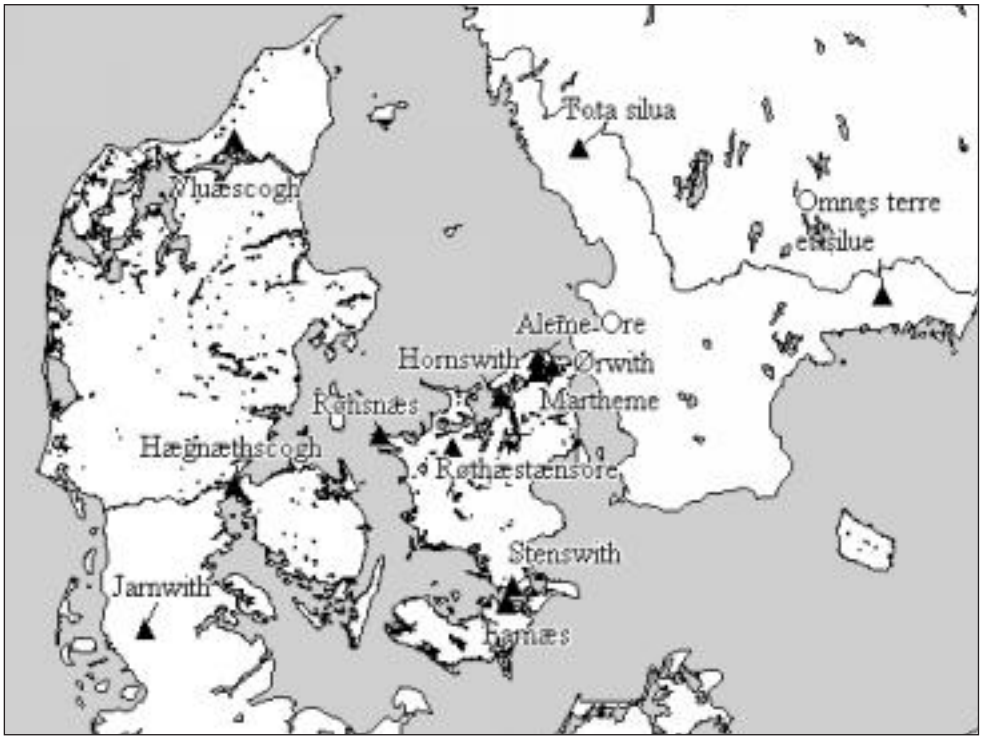

Fig. 11: *Woods mentioned as crown woods* (kongelev) *in King Valdemar's Land Register.*

skowff[10] – appears to cover all those woods that were not allotted on farm or village level but subject to various degrees of common utilisation. So the number of *alminding* woods characterised as 'open to all' and thus 'common' in the sense of Garrett Hardin was in decline. It is therefore hardly a coincidence that the existence of *almindinger* is best documented in the Danish provinces east of the Sound where these woods were most extensive.

King Valdemar's Land Register explicitly refers to no *almindinger* west of the Sound even if it is likely that one or more of the mentioned crown woods (*kongelev*, see below) actually served as such.[11] This could apply to Vluæscogh (Ulveskov, Aaby parish) and Jarnwith (Dänischwold in Schleswig) in Jutland, Hæghnæthscogh (near Hindsgavl) in Funen, Farnæs on Falster and Ørwith (near Esrom, now disappeared), Aleme Ore (Græsted parish), Martheme (Mårum parish), Gripscogh (Gribskov), Bouæscogh (north of Copenhagen), Hornswith (on the Hornsherred peninsula),

10. Repertorium Diplomaticum regni Danici Mediaevalis II, no. 8574 (19.4.1498).
11. In contrast, J. Steenstrup (1874, p. 360) considers that this part of the land register mentions no *almindinger* in Jutland and Funen.

Røthæstænsore (presumably located in Tudse District), Røhsnæs (Røsnæs) and Stenswith (Stensved near Vordingborg) on Zealand (fig. 11).[12]

In Skåne, the Land Register explicitly designates Sygthæsore and the coastal islands as *alminding*. In Blekinge 'all land and wood with its adjoining lands being then the property of the king since it was not alienated' was *alminding*.[13] Finally, an indefinite part of the woods of Halland were simply called *alminding*.

Some *almindinger* in Skåne appear to bear the same attributes as the *herredsalmindinger* known in Sweden – i.e. to be restricted to the inhabitants of the *herred* (district) of its location.[14] This was, for example, the case in Albo District on the east coast, where an extensive *alminding* was first mentioned *c.* 1200.[15]

In 1470 its boundaries (which also served as the district's borders against the neighbouring Järrestad and Ingelstad) were established by perambulation, i.e. by witnesses walking or riding to inspect the border marks.[16] Still, in spite of this merging, it remains questionable whether the term *herredsalminding* is really appropriate since the diploma does not restrict the use of the *alminding* to the inhabitants of the *herred*. It looks as if it was open to all.[17]

In 1176 the king bestowed the village Morup in Halland on the Cistercian Esrom Abbey.[18] And in 1197 archbishop Absalon donated to its sister abbey in Sorø parts of the nearby Tvååker.[19] In both cases, wasteland resources were in focus. The donations were meant to secure the abbeys a steady supply of fish, salt, timber and iron.[20] In both cases, however, the actual status of the forests included in the grants was uncertain or changeable. As they were partly affected by cessions mentioned in the Land Register, they were not part of the alleged royal *alminding* that covered most of Halland.

Regal pretensions and peasant rights

Alminding woods summarized notable aspects of medieval power politics. According to *Jyske Lov* (I.53), the peasantry in such commons 'had' the trees whereas the king 'had' the forest floor. The term is, however, more likely to express royal aspi-

12. Kong Valdemars Jordebog pp. 30r-31r.
13. Kong Valdemars Jordebog p. 31 v: 'Omnes terre et silue ceteraque eis attinencia in quorum possessione tunc erat dominus rex quia non erant alienata'.
14. C. G. Ihrfors 1916.
15. Diplomatarium Danicum 1.3.109 (1182-1202).
16. Repertorium Diplomaticum regni Danici Mediaevalis II: 2772 (30.6.1470).
17. E. Oksbjerg 2002, p. 66.
18. Codex Esromensis no. 216 (6.7.1176).
19. Diplomatarium Danicum 1:3:223 (1197).
20. G. Magnusson 1995.

rations than palpable realities. A similar conception is found in the transcript of a diploma from Knud VI (1182-1202). The king here grants the *alminding* to the inhabitants of Albo District whereas he explicitly retains the land for the crown.[21] In Sweden, medieval kings claimed a so-called *konungslott* in many *almindinger* – i.e. a spatially unspecified 'lot' or share of their use – the origin of which remains uncertain.[22] But it has not been possible to trace any clear connection between this claim and the Danish pretensions.

The idea that the king owns all that no one else possesses is widely acknowledged during the Middle Ages.[23] It complements so to speak the idiom 'sans terre sans seigneur' (no land without a lord).[24] So calls for royal prerogatives regarding specific, natural resources, which were marginal from the point of view of ownership but most certainly not from an economical perspective flourished in large parts of Europe.[25] One such resource was wreckage, a feature in repeated thirteenth century clashes between the crown and the church.[26] Wasteland was another.

Regal rights served as a layer of super-proprietorship but should not be confused with actual ownership.[27] Areas covered by royal prerogatives did not become 'crown lands' *sensu stricto*. With an abstract legal concept they were subjected to royal *dominium* rather than *proprietas.*

The first positive evidence of a Danish application of this royal claim on all unoccupied lands appears in *Jyske Lov* of 1241. Article 3.61, which deals with the appropriation of shipwrecks, states categorically that 'what no man has, the king has'.[28] The ancient Nordic term '*a*' clearly reflects possession (has) rather than a more comprehensive proprietorship (owns). And even if the wording suggests the maintenance of ancient custom, it is likely that the royal demand expressed by this clause was new at the time.[29]

The exact date of its first formulation is, however, questionable. Medieval chroniclers made a determined effort to substantiate it by historical arguments. The most explicit is formulated in the so-called *Knytlinge Saga*, a thirteenth century Icelandic history of the kings of Denmark from Harald Blåtand (Harold Bluetooth) († 985) to Knud VI (1182-1202). It is assumedly based upon older, now lost, writings also

21. Diplomatarium Danicum 1:3:109 (1182-1202): 'saa vnde wy thenom her efftter at nyde skoen thenom till gode, men grunden schall høre osz till'.
22. J. E. Almquist 1928, p. 498.
23. O. Fenger 1989, p. 96.
24. J. Le Goff 1982, p. 204
25. H. Thieme 1942.
26. E.g. Diplomatarium Danicum 2:5:42 (19.6.1299).
27. O. Fenger 2000, p. 276.
28. Danmarks Gamle Landskabslove 2, p. 484: 'thæt thær ængi man a. thæt a [...] kunung'.
29. A. Leegaard Knudsen 1988.

employed by the late twelfth century historian, Saxo.[30] The Saga tells that Knud den Hellige (Canute the Holy) (1080-86) on a stay in Skåne – probably in the provincial court – proclaimed that 'everybody in Denmark knows what the king owns and the peasants own, that the king has all wasteland in this country. Will you confirm that?'.[31]

The royal prerogative on the wilderness even generated the notion that the king was the original possessor of all woodland. Still, most medieval woodland was undeniably in private possession. This obviously required an explanation, and Svend Aggesen, the author of a brief outline of Danish history until his own time c. 1185, was the first to give one. He tells us that Svend Tveskæg (985-1014) was actually the first king ever to grant the Danes a share of forests and groves.[32]

A more elaborate justification is found in Saxo's extensive *Gesta Danorum*.[33] He reveals the intriguing story of how king Svend was once – or, in fact, twice – captured by the Vikings from Jomsborg on the southern coast of the Baltic. In order to raise a ransom, he was compelled to sell the forests to the people. Interestingly, the sale took two different forms. 'The Scanians and Zealanders bought forests in common, by public contribution. But in Jutland there was no joint purchase, except by families "knit by long continued kinship"'.[34]

How is one to consider such narratives? Did medieval woods really originate from royal possession? Or were the stories of Aggesen and Saxo rather serving current political purposes? According to Erik Arup, they were most likely to be fictitious.[35] For Annette Hoff, the evidence produced by the two authors suffices to date the claim to the late eleventh century.[36] Based upon this assumption, it is not perfectly clear whether she considers the articles of *Skånske Lov* about *almindinger* to be older than *c.* 1080 (p. 128) or to have been formulated in opposition to the royal claims (p. 258). It is nevertheless peculiar that, contrary to the somewhat younger *Skånske Lov*, king Valdemar's Land Register considers all *almindinger* in this part of the country as royal, whereas no *alminding* woods, as mentioned earlier, are referred to in Jut-

30. E. Jørgensen 1931, p. 43; G. Albeck 1963; S. Ellehøj 1966; A. E. Christensen 1977, p. 370.
31. Sǫgur Danakonunga, p. 147: 'Þat munu allir menn vita, hvat hér er konungs eign í Danmǫrku eða bónda eign, at konungr á auðn alla hér i landi. Eða hvárt játi Þér Því?'; a translation to modern Danish is found in Knytlinge Saga, p. 47.
32. Scriptores Minores I, p. 121: 'Dani a rege silvarum et nemorum tunc primum communia impetrarunt'.
33. J. Steenstrup 1874, p. 351; I. Skovgaard-Petersen 1966.
34. Saxo Grammaticus 10.9.1: 'Enimvero Scani ac Sialandenses communes silvas publico aere comparaverunt. Apud Iutiam vero non nisi familiis propinquitatis serie cohaerentibus emptionis communio fuit'. English translation by E. Christiansen in Saxo Grammaticus 1981, p. 16.
35. E. Arup 1925, p. 223; see also E. Oksbjerg 2002, pp. 68 f.
36. A. Hoff 1997, p. 128.

land.[37] This might, however, reflect differences in population density between central Jutland and northern Skåne.

Most likely, the largely parallel descriptions by Aggesen and Saxo should be interpreted as an effort to support a late twelfth century royal claim of certain royal prerogatives. This would fit well into the general character of the works of both authors. 'The national self-assertion of the Valdemarian epoch' is richly represented in Svend Aggesen's short chronicle.[38] In his description of the royal housecarls, he 'aspired to outline how his own class, the yeomen, developed as a rank attached to the king whom they served as knights'.[39]

Saxo, the dominant Danish historian of the Middle Ages, was influenced by monarchical ideas formed by John of Salisbury. His metaphor of society as a body with the king as its head was recognised throughout medieval Europe.[40] 'Then and then only will the health of the commonwealth be sound and flourishing, when the higher members shield the lower, and the lower respond faithfully and fully in like measure to the just demands of their superiors'.[41]

In his portrayal of Harald Hen, an unjust king, Saxo most clearly formulated his view of kingship: 'Indulgently overlooking the unpunished crimes of all men, he tore up all records of former laws, and was not aware that God is better pleased by an energetic administration of the kingdom than by the vain impulses of superstition'.[42] As God's appointee, the king should guarantee justice by legislation, jurisdiction and protection of the church.[43] So, even though he paralleled the powers of church and crown, as Svend Aggesen he must be regarded as advocate for a strong monarchy.

In this way, then, through their description of the establishment of private forest ownership, the stories subtly argue for its opposite: the royal dominion over the remaining wastelands. This is, in fact, what King Valdemar's Land Register claims: that the *almindinger* as well as the settlements founded in them should be treated as royal possessions (*kongelev*).[44] Several sources accordingly treat *alminding* and *kon-*

37. J. Steenstrup 1874, p. 354, 363.
38. E. Jørgensen 1931, p. 28: 'Valdemarstidens nationale Selvhævdelse'.
39. S. Bolin 1934, p. 54: 'Vad han söker skildra är hur han egen klass, bondearistokratien kom att bli ett stånd, knutet til kungen och tjänande honom såsom riddare'.
40. A. E. Christensen 1945, pp. 53 f; e.g. in Saxo Grammaticus 10.11.3.
41. C. f. J. B. Ross & M. M. McLaughlin 1977, p. 48.
42. Saxo Grammaticus 11.10.8: 'impunitas omnium noxas enervi scelerum indulgentia praeteribat omniaque statuti iuris munimenta convulsit, ignarus plus Deo sinceram regni administrationem quam inania superstitionis momenta placere severumque iustitiae cultum supervacua precum adulatione gratiorem exsistere'; translation according to Saxo Grammaticus 1980.
43. I. Skovgaard-Petersen 1987, p. 239.
44. Kong Valdemars Jordebog p. 31 v; E. Arup 1925, p. 246.

gelev as analoguous. This appears, for instance, to be the case in a thirteenth century perambulation of the commons in Ljunits District in Skåne. An area was here defined by a 'border between peasant land and *kongelev*',[45] though it was already dominated in the Middle Ages by wood pastures and grasslands rather than of closed canopy woodland.[46]

Apart from the towns, substantial parts of the estate recorded in the list of royal *kongelev,* which is a part of King Valdemar's Land Register, were forest (and possible *alminding*). Later evidence emphasises the royal claim on the *almindinger* in Skåne. As late as in Christian I's privileges for that part of the country in 1481, he mentions 'our (i.e the king's) *alminding*'.[47]

The claims on wastelands expressed by Danish kings and their mouthpieces during the Middle Ages, corresponded to the development of royal game reserves in England and on the Continent.[48] Basically, two different sorts of reserves existed: the extensive *foresta*, that were based upon a royal hunting prerogative; and the somewhat smaller 'parks' or 'garennes', where stocks of frequently exotic game species were propagated.

Even though the provincial laws comprise a number of articles on hunting, none mention any royal prerogatives parallel to those of, for example, the English *Carta Foresta* (Forest Charter) of 1217.[49] An even earlier attempt to create a royal hunting privilege is normally attributed to the Danish king, Knud den Store (Canute the Great), but since it is most likely younger than this, it can have had no direct influence upon Danish legislation.[50]

Unfortunately, our knowledge about the royal Danish hunt in the Middle Ages is limited.[51] Still, scattered information testifies that the royal family on several occasions were personally involved in the hunt. In 1223, king Valdemar II together with his oldest son, Valdemar the Young, were captured by enemies during a hunt on Lyø. And eight years later, the crown prince was killed by an accidental shot at a hunt in Røsnæs, a peninsular recorded as *kongelev.* So the existence of medieval Danish *foresta* is plausible.[52]

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45. Kong Valdemars Jordebog p. 27 v: 'Thettæ ær skial mællæ bondæ mark oc kununglef'.
46. B. Berglund 1991, passim.
47. Den danske rigslovgivning 1397-1513, no. 35 (9.3.1481).
48. C. Petit-Dutaillis 1913; M. Ley Bazeley 1921; F. Mager 1941; H. Thieme 1942; M. Thiebaux 1967; C. R. Young 1979; R. Bechmann 1984, pp. 280 ff; O. Rackham 1989; E. Oksbjerg 1989A; J. Tsouvalis 2000.
49. E. Oksbjerg 2002, p. 67.
50. A. Hoff 1997, p. 268.
51. C. Weismann 1931, pp. 36 ff.
52. As E. Oksbjerg 1989A.

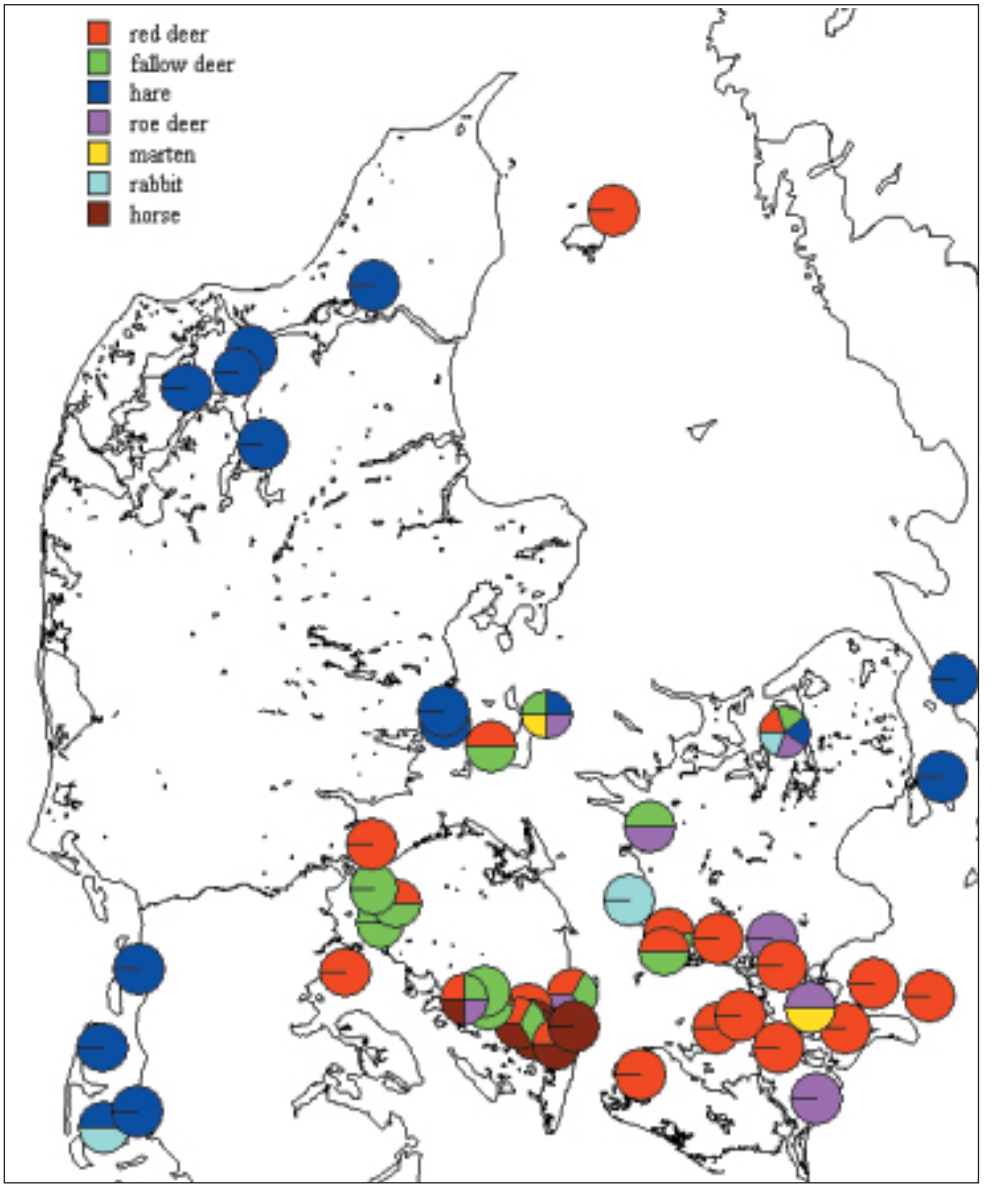

Fig. 12: *The occurrence of game species according to the 'List of islands' in the thirteenth century manuscript 'King Valdemar's Land Register'.*

Nevertheless, the question remains whether it is possible to date the predecessors of well-documented sixteenth century *fredejagter* and *vildtbaner* (hunting preserves) as early as the twelfth or thirteenth; and thus to relate them to the royal claim on *almindinger*.

The so-called 'List of islands' included in King Valdemar's Land Register might

contribute to solve the problem.[53] The list, which is undated, records a great number of islands while noting the species of game (red deer, fallow deer, roe deer, hare, marten, rabbit and horse) that are represented on each of them and whether it provides habitation. It is remarkable, that apart from Læsø, large game was totally concentrated on the islands of southern Denmark. Here, Langeland and Falster were later designated as royal *vildtbaner*. And Lyø, south of Funen where Valdemar II was caught, is included in the list.

The royal claim on the forest lands in *almindinger* was most likely induced by a desire for future land taxes. In the real world, however, the prerogative was seriously questioned. And so, on the other hand, were peasant rights.

Scattered evidence suggests that woodland control was a major issue in a number of political conflicts during the Middle Ages. According to the Roskilde Chronicle of the late 1130's, King Harald Hen (1074-80) once aided the peasantry to regain forests which had been acquired by the nobility: 'He ordered that the woods acquired by the powerful for themselves should be common'.[54]

Except for emphasising the law, the motive for this action is not immediately evident.[55] The somewhat sudden royal guardianship over ancient customary rights might, however, reveal exactly the same aims as the pretensions reflected by Aggesen and Saxo. Common utilisation as opposed to private appropriation could readily be interpreted as recognition of royal supremacy. Poul Johs. Jørgensen consequently interprets the message so that the maintenance of peasant use rights corresponded the kingly dominion over the *alminding*.[56]

According to *Knytlinge Saga*, this claim was, however, pushed a bit too far by Harald's successor, Knud den Hellige (Canute the Holy), when he banned all pasture in the 'royal forests' of Halland – also for swine and other small cattle.[57] Later, rebellious subjects killed him. And in doing so, Danish 'peasants' acted in line with their European counterparts. Woodland resources and their social distribution formed a recurrent theme in medieval European peasant risings. As early as in 997, rebellious Norman peasants demanded free access to the woods, just as similar claims formed the background of several late medieval German revolts.[58]

In a Danish context, the exact motives of no less than eleven sparsely documented upheavals of the period 1249-1340 are, however, difficult to deduce. The increasing seigneurial demand for rents attached to the possession of *herligheds* rights (see p. 191) as well as extraordinary royal taxation appears to have provoked several.[59] But

53. Kong Valdemars Jordebog 1, pp. 30-33.
54. Scriptores Minores I, p. 23: 'Hic siluas, a solis potentibus obsessas, communes fieri iussit'.
55. O. Fenger 1989, p. 63
56. P. J. Jørgensen 1940, p. 186.
57. Knytlinge Saga, p. 47.
58. A. Bühler 1911; H. Hausrath 1924.
59. H. Paludan 1977, p. 494; J. Würtz Sørensen 1983, p. 109; J. Myrdal 1995.

even though peasant access to natural resources was gradually restricted, the customary rights to make use of *almindinger* apparently tended to persist.

The general entitlement to cut trees in the *alminding* was initially acknowledged by the provincial laws (see pp. 69 ff). And in 1282 Erik Klipping confirmed this right in a letter to the inhabitants of Bara District in Skåne, whom he allowed 'except in our old "*orer*" to cut in those woods that are called "*almindinger*" and in those sworn to be *almindinger*'.[60] Apparently, we here have a distinction between *almindinger* (or the later clearly synonymous *orer*) recognised as such by local custom (woods called *almindinger*) and others designated as such by village court agreements (sworn to be *almindinger*). If 'sworn' has the same import in this context as it has in regard to *tofter* in the provincial laws,[61] then areas 'sworn to be *alminding*' could hypothetically consist of former arable – or at least of previously allotted lands.

Medieval enclosures

Almindinger did not, as previously widely assumed, represent the dominant kind of woodland possession during the Middle Ages.[62] Numerous woods were regarded as the property of either well-defined peasant communities or individuals. And in such cases, property was provided with physical dimensions and, hence, with geographical boundaries.

So both *Skånske Lov* (article 72) and Valdemar's *Sjællandske Lov* (article 196) declare that if two neighbouring villages disagree about the border, twelve elders (*oldinge*) should be chosen among their inhabitants to swear upon its course 'because they believe it to be the proper border and they have heard it so by their forefathers'.[63] This obviously applies to borders in arable fields as well as in woods.

The slightly younger *Jyske Lov* (article II.21) deals with the matter in somewhat greater detail. 'If dispute arises concerning the village border, the court officials of the district should determine the boundary by stick or stone and subsequently testify on the disputed place that they have done right'.[64] More elaborate precepts are

60. Diplomatarium Danicum 2:3:21: 'Item omnibus bondonibus exceptis nostris antiques hora in siluis que dicuntur almenning et que ad almenning iurante sunt licentiam concedimus succicendi' (20.3.1282-17.6.1283).
61. A. Hoff 1997, p. 90.
62. As e.g. C. Christensen Hørsholm 1879, p. 91.
63. Danmarks Gamle Landskabslove 11, p. 46: 'fore Þæt at Þe uæntæ sua [wæræ] ræt markæ skial, ok sua hæfæ Þe hørt af Þeræ forældrum'; idem 8, p. 92.
64. Danmarks Gamle Landskabslove 2, pp. 177 ff: 'Skil mæn vm markæ skial. tha vghæ the sannænd mæn af thæt hæræth. at staplæ antugh mæth stok æth mæth steen. oc sweræ sithæn i thæt stath thær skalnæth ær. at the hauæ gørth ræt'.

further given regarding field borders, which served as district borders and cases in which a peasant acquired lands across the village border.

The perambulation procedure to 'ride the field boundaries' (*rithæ mark skial*) is mentioned in *Jyske Lov*, but it was presumably an ancient one at the time even though only a few examples of its effectuation are known. In 1173 the wood Villinghoved in Northern Zealand was perambulated. The king was about to donate it to the nearby Cistercian abbey of Esrom, and Absalon, bishop in Roskilde, together with his kin, Sune, expressly did this 'as it is our habit'.[65] So we must believe it was not the first time they had done so. It was decided that the border should run 'from Wichinbrot towards the east to Hornisseu and then falling to the river that is called Hornisbech in the direction of the sea until Widelingbec'.[66]

When *almindinger* or *overdrev* were partitioned, the result was a number of woods each pertaining to a specific settlement. And such a wood could easily continue to be managed in common by the village farms. But medieval evidence also refers to *enemærkeskov*, i.e. woods held exclusively by a single possessor. And the provincial laws comprise several articles aimed at the protection of such property.

Still, even though private ownership prevailed in these woods, others than the owner could enjoy a few well-defined rights. Wayfarers were, for example, permitted to pick as many nuts as a glove or hat could contain, but no more (SkL 207). And if the axle of a passing cart broke, the driver was permitted to cut the timber needed for its repair (SkL 193).

The provincial laws use two distinct concepts to designate such individual woods or woodlots. In a number of occurrences, they are just referred to as 'another man's wood'.[67] But in parts of *Skånske Lov* they appear as what must immediately be interpreted as 'another man's fenced wood'.[68]

Logically, individual woodlots resulted from a division of the common. Yet it proves extremely difficult to date this process apart from the fact that thirteenth century provincial laws include certain enclosure regulations. Appended to articles dealing with the general distribution of land, Erik's *Sjællandske Lov* records that 'when it comes to wood enclosure, this shall not be made according to the localisation of the *toft* relative to the sun, because one takes the poorer forest and adds it to the better, in this way equalising them. Everyone can appropriate the lot which he gets in the

65. Codex Esromensis no. 85 (c. 1173): 'sicuti moris nostri est', c. f. Diplomatarium Danicum 1:2:128. On Villinghoved see S. Andersen 1995; B. Fritzbøger 1997C.
66. Diplomatarium Danicum 1.2.128 (c. 1173): 'de Wichinbrot versus orientem usque Hornisseu et in descensu per riuum, qui dicitur Hornisbech, vsque ad mare, quosque peruenitur ad Widelingbec'.
67. E.g. SkL 192, VSL 3.23, ESL 2.78, JL 2.73 and 3.40.
68. E.g. SkL 191, 193, 195, 196, 198, 201, 203, 204, 206, 207 and 210.

forest, but he must be prepared to fit it in with the others'.[69] In order to secure an equal distribution of good and bad forest, every farm was to be allotted a number of woodlots, whose locality was not determined by the relative position of the tenant farm's *toft* (basal plot in the village) as was the case in villages with a land distribution based upon the so-called *solskifte*.[70]

In a fifteenth century document from Skåne, we are told that Hareberge Lund was enclosed in such a way that the part pertaining to Per Tuesen was located 'farther from the sun in the grove, as far as the forest mark'.[71] This somewhat obscure remark cannot, however, serve as positive evidence of *solskiftet* wood.[72]

Poul Meyer interprets the articles on wood enclosure as representing something relatively new at the time of their issue.[73] Yet Annette Hoff, who argues that in this point, too, the provincial laws merely codified an ancient oral tradition, has lately countered this view. The formulation in Erik's *Sjællandske Lov* II.56 'man takær oftæ' could supports this view, since '*oftæ/ofte*' means 'frequently' or 'habitually'. The term consequently appears to reflect a well-known practice rather than a legal innovation. Still, her assumption that the enclosure articles were designed to prevent royal assertions of an *alminding* prerogative and hence originate from the late eleventh century remains unsupported.[74]

During the early modern period from which the evidence is far more plentiful, field woods covered arable land and meadows. The same must have been the case during the Middle Ages. And since such areas were normally divided among the village farms, a substantial part of medieval woodland possession is likely to have followed the same division.

So woods were divided according to *bol* or *sol*, as they followed the field strips and furlongs of the open field landscape. It is, however, impossible to determine to what extent ownership of land and trees corresponded geographically or whether land ownership served merely to define a proportionate share of the wood.

For woods owned in common by tenants (*bryder*) and freeholders (*bønder*) or individually by the crown, nobles or the church, a 1473 statute for Funen (called *Fyns Vedtægt*) decided that each had the right to fell trees according to the extent of

69. ESL II.56: 'Æn um scoghæ skiftæ tha ma thet ey swa gangæ afti sol fallit som toft ær for thy man takær oftæ then wærstæ scogh oc lægger ofnæ bæstæ oc gør swa iafnæth. Then lot hwær fangær i scoghæn ær, tha ma han sin hæfth thær a at kummæ. oc tho til iafnæth wiht annær'.
70. S. Hahnemann 1997; K.-E. Frandsen 1999.
71. Repertorium Diplomaticum regni Danici Mediaevalis I, no. 7729 (6.11.1447): 'fjærnere Solen i Lunden til Skovmærke'.
72. A similar wording about land in Døjringe 1298 is found in Liber Donationum Monasterii Sorensis p. 477: 'duas oras in Mulæbool posterius a sole'; cf. P. Meyer 1949, pp. 244 ff.
73. P. Meyer 1949, p. 198.
74. A. Hoff 1997, p. 260.

his part of the land.[75] At this time, or rather in this case, a physical correspondence between land and wood seems to be assumed.

In general, no legal distinction between arable and woodland was needed because the wood simply went with the land. But in specific instances, a dividing line between wood and field appears to have been required. One of the more obscure articles in *Jyske Lov* of 1241 (I.53) states that wherever 'one man's wood and another man's field meet, then the former has as far as the branches and the roots of the trees'.[76]

The clause appears to relate to cases where the owner of the wood possessed both the trees and the land beneath them but not the clearings surrounding or embraced by the wood, and where no physical demarcation of land ownership existed, whether covered with trees or not. Even though it is far from uncomplicated to define such cases, the article has brought about few considerations in the literature on Danish legal history. Poul Meyer simply records that the article is related to measurements and delineation of woods such as those found in the laws of Zealand and Skåne.[77] Recently, Annette Hoff assumes that the clause primarily concerns extensive woodlands, while she expects the border problem to be most pertinent in regard to small woods.[78] Yet neither questions the very relevance of this kind of boundary.

Erik Oksbjerg deduces the existence and regulation of coppice woods from the wording of this article.[79] This, however, is hardly tenable. He considers it 'unquestionably obsolete (irrelevant)' in 1241,[80] but the article was adopted in *Danske Lov* and in some cases employed in legal usage.[81] In 1475, a piece of arable was, for example, mortgaged from the manor of Barritskov 'as far as the plough turns and nothing in the wood in any manner'.[82] In this case the manor was the undisputed proprietor of both trees and land. But in an instance where parts of the non-wooded lands were to be sold, the arable was defined negatively by the forest boundary. The

75. Den danske rigslovgivning 1397-1513, no. 33 (15.9.1473): 'hwor som bonde oc brydhiæ hawe fællets skow sammen, ther nyde hwar vdi feldhæ, som han hawer vdi grwnden ... hwor som kronen, kirken oc ridderskap hawe serdeles skowe, ther nydher hwar, som han hawer vdi grwnden'.
76. 'Møtæs ens manz scogh oc annæns mansz mark, tha a hin thær scoghæn a. swo langt sum limmæ lutæ oc root rænnær'.
77. P. Meyer 1949, p. 199.
78. A. Hoff 1997, p. 251.
79. E. Oksbjerg 2002, p. 37.
80. E. Oksbjerg 2002, p. 69: 'åbenlyst forældet (irrelevant)'.
81. Danske Lov 5-10-20: 'Mødes Mands Skov og anden Mands Mark, da bør den, der skov eier, saalangt som Grenene lude og Roden rinder ...'.
82. Gamle Jyske Tingsvidner no. 101 (21.11.1475): 'so langth som plowen wænder, oc enthet aff skowen i nogher made'; an older, comparable example is found in Dipl. Dan 4:1:249 (14.6.1377): 'Omnia bona nostra […] silua seu rubetis dumtaxat'.

article might simply have served to safeguard the forest against neighbouring peasants. But when were such precautions necessary?

Most likely, the clause applies to cases where a former *alminding* or *overdrev* was fragmented by new settlements or clearings while its woods were appropriated by the crown, local manors or nearby villages. When the ancient right to multiply or enlarge the clearings no longer existed due to the gradual amplification of property rights, their restricted rights had to be defined plainly and comprehensively to everyone. Here the physical border made out by the surrounding trees formed an obvious choice. And in the thirteenth century, such clearings appear to have been numerous.

Still, the double reference to land/roots and tree/branches might also reflect a wider European tradition for designation of woodland property. In the feudal ceremonies of *traditio* – the transition of fiefs or other landed property – some material part of the property in question was usually employed to represent the entire object.[83] And in some cases, this symbolic token was made up by turf and twig or in Frisian *torve und twige*.[84]

Fences?

Skånske Lov apparently employs the concept 'fenced woodlot' in a number of articles. Article 206, for example, describes cases were 'Liggia tua hæhnæÞæ skohe samman'.[85] In a translation to modern Danish this has been rendered as 'Støder to indhegnede skove sammen' or literally 'When two fenced woods meet'.[86] This reading, however, comprises at least one major inaccuracy – and probably two.

Firstly, '*liggia ... sammen*' should not be translated as '*støder ... sammen*' ('meet') but rather as '*ligger ... sammen*' ('are lying together'). Secondly, the explication of '*hæhnæÞæ skohe*' is dubious.[87] Wood fences appear in no other Danish law from the Middle Ages, and no ditches or other relics from such woods are known except for manorial closes.

According to Johannes Steenstrup, the term could only be interpreted as '*hegnede skove*', i.e. fenced wood(lot)s.[88] And the Swedish *Gutalag* from *c.* 1220 actually mentions 'a man's wood within the poles' which must relate either to wood fences or at least to some kind of boundary marks.[89]

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83. J. le Goff 1977, pp. 349 ff.
84. C. Kjer 1889, p. 10, 40.
85. Danmarks Gamle Landskabslove 1, p. 166.
86. Danmarks gamle Love paa Nutidsdansk 1, p. 71.
87. A. Hoff 1997, p. 252.
88. J. Steenstrup 1874, p. 347.
89. C f A. Hoff 1997, p. 252: 'manz scoghum innan staurs'.

Poul Meyer considers the legal evidence contradictory.[90] Some articles of *Skånske Lov* appear to presuppose some kind of fence, while others do not. And what is more, if individually fenced woodlots really did exist in great number in the thirteenth century, then they must have been replaced by some kind of renewed commonage during the succeeding period.

Only few such woods are known from the early modern period. According to this reasoning, Annette Hoff interprets wood fences as either insignificant in number (but predominant in legal cases) or simply equivalent with those manorial *enemærker* (closes) well known from later periods.[91]

According to the word list developed in association with the scientific edition of the provincial laws, however, *hæghnæth* means 'in peace' or 'conserved' rather than 'fenced'.[92] And a wide range of evidence supports this interpretation.

Lollands Vilkår from 1446 employs the term '*hey*' synonymously with 'peace',[93] and a couple of decades later, a leaseholder had to promise to 'heye' the wood he was going to rent.[94] In 1499, we are informed that due to their critical condition, conservation and *hegn* of forests has been initiated on the Baltic island Bornholm.[95] In this context illegal cutting is labelled *whegn*, i.e. the opposite of *hegn*. Similarly, grasslands were expected to be conserved (*hegneth*) whereas the rye-field was fenced (*gerdæ*) during the summer.[96] Finally, the same adjective in at least one example was applied to a distinctly different natural resource, fishery. In 1248 one of the farms belonging to Esrom Abbey had 'protected hauls'.[97]

So ample evidence supports the interpretation that the '*hæhnæPæ skohe*' of *Skånske Lov* were some kind of conserved woods or woodlots rather than fenced closes. At least, temporary woodland conservation was not unfamiliar to the early modern period. The term '*fredsskouff/fredskov*' (conserved wood) was initially used in 1521,[98] and according to a 1669 forest bylaw, Frejlev Skov on Lolland should be kept in *'hejd'* and peace.[99] Obviously, nothing prevented their specific status having been emphasised by some kind of marks.[100]

Still, some semantic uncertainty or dynamism might subsist. The register of

90. P. Meyer 1949, p. 199.
91. A. Hoff 1997, p. 253.
92. Personal communcation of Bent Jørgensen, University of Copenhagen; see also E. Oksbjerg 2002, pp. 29, 52 ff, 99 f.
93. Den danske rigslovgivning 1397-1513, no. 18 (22.6.1446), article 2.
94. Repertorium Diplomaticum regni Danici Mediaevalis II, no. 3044 (25.2.1472).
95. Den danske rigslovgivning 1397-1513, no. 48 (6.7.1499).
96. Repertorium Diplomaticum regni Danici Mediaevalis II, no. 9636 (9.7.1502).
97. Codex Esromensis no. 109 (18.11.1248): 'hægnethe dræther'.
98. De ældste danske Archivregistraturer II,p. 61; cf idem V, p. 229.
99. W. von Antoniewitz 1944, p. 85.
100. P. Meyer 1991, p. 156.

donations of the abbey in Sorø compiled *c.* 1440 mentions, for instance, the wood of Lorup 'for innen hæghe'.[101] This seemingly relates to the geographical position inside a fence. In a late fifteenth century diploma, '*ett hegnidt*' is unquestionably considered as synonymous with 'close' whether fenced or not.[102] In most cases, however, the term is used in an indistinct form similar to that of the provincial laws.[103] A 1470 document, for example, refers to '*heghnedhe skoghe*, *heghnets skou*' and '*ienmerke och heghnedhe skoghæ*'.[104]

'*Hegn*', moreover, appears as an element in several place names.[105] An early thirteenth century document refers to *Gamle Hægheth* in Skåne.[106] King Valdemar's Land Register mentions *Hægnæthscogh* near the small town Middelfart on Funen.[107] The Land Register of the bishop of Roskilde *c.* 1370 has *Nyheyneth* and *Gamle Hegneth*,[108] and *Konunghegnet* near Roskilde was mentioned in 1295.[109] It appears, then, that temporal or partial forest conservation was an integrated feature of medieval woodland management. This may specifically relate to the brushwood coppice cycles.

Violation of property rights

The actual limits of property rights are most clearly revealed in cases of transgression. And violation of woodland property appears to have been a prominent feature in medieval legal practice; in particular the fattening of swine in woodlands during the autumn months.

The significance of the matter is testified by a provision in the so-called 'Abel-Christofferske Statute', the date and formation of which has been intensely debated among Danish historians but which is presumed to be from the 1250's.[110] It resolved that the king was not entitled to force peasants to let their swine out on pannage in the royal forests (against payment of a due called *oldengæld*).

The matter of distribution of *oldengæld* was frequently acute. In 1313 the income from the forests around Lorup was divided with one fifth to Sorø and four fifths to

101. Liber Donationum Monasterii Sorensis, p. 516.
102. Repertorium Diplomaticum regni Danici Mediaevalis II, no. 3639 (19.6.1475).
103. E.g. Repertorium Diplomaticum regni Danici Mediaevalis *II*, no. 4214 (20.5.1478).
104. Repertorium Diplomaticum regni Danici Mediaevalis II, no. 2772 (30.7.1470), based upon an eighteenth century transcript in Langebeks Diplomatarium, Rigsarkivet, Håndskriftsamlingen I.
105. For a sixteenth century example, see *Kronens Skøder I*, p. 39 (17.5.1551).
106. Diplomatarium Danicum 1:4:67 (1202-23).
107. Kong Valdemars Jordebog I, p. 27.
108. Roskildebispens Jordebog, pp. 27, 39.
109. J. Steenstrup 1874, p. 348.
110. Den danske rigslovgivning 1, no. 7, p. 49; T. Riis 1977, pp. 55 ff.

the noblemen Peder Nielsen and Karl Pedersen.[111] And a little less than a hundred years later, a decree from the provincial court divided the nearby woods on the northern shores of Tystrup Lake with three quarters to the abbey and one quarter to the owner of Vinstrup Estate.[112] Pannage was, however, not the only resource to cause legal conflicts. The Abel-Christofferske Statute also bans royal cutting in privately owned forests. This prohibition was repeated in Erik Menved's privileges for Skåne in 1317 and in the coronation charter of Valdemar III of 1326 (§33).[113] The issue here is firstly the restriction of royal claims against private property, and secondly the protection of individual possession against expansionist neighbours.

Landlords appear, therefore, as the primary agents in most conflicts concerning woodland property before 1350. No matter whether the question concerned the establishment and maintenance of manorial wood-closes, the defence of individual parcels or communal use rights in peasant woods held by their tenants, it was basically the landlords' interest that was at stake. Proprietorship they regarded fundamentally as theirs – and laid their claim to it accordingly.

This aspect of economic interest is evident in the first known instances of property rights conflicts in regard to woodland. When in 1197 the Abbey of Sorø received its possessions in Tvååker, the question of woodland borders became the subject of considerable interest since the neighbours contested the demarcation set up by the monastery.[114] And even a couple of decades before this, its mother house in Esrom experienced considerable hardships because of forestry rights obtained some fifteen kilometres south of Tvååker, in Morup.[115] Initially it only acquired the right to participate in the *alminding* called Glumstenskov, but gradually attempts were made to take over the entire wood. To impede this development, local landowners in about 1180 took legal proceedings against the monastery.[116] Apparently, the case resulted in an assignment of total property rights to Esrom.[117]

The provincial laws prescribe several punitive measures for crimes related to woods. In doing so, they bring to light the hidden valuations linked to different aspects of woodland property. The primary penalty clauses of *Skånske Lov* are presented in table 1. In general, fines prevailed. Only in cases of actual theft could corporal punishment or death be applied. The unequivocal determinants of regular theft were invested work (timber) and possession (a bee swarm known to belong to someone else).

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111. Liber Donationum Monasterii Sorensis p. 516.
112. Liber Donationum Monasterii Sorensis p. 502.
113. J. Steenstrup 1874, p. 361; Samling af danske Kongers Haandfæstninger, p. 14.
114. Diplomatarium Danicum 1:4:67 (1202-23).
115. Diplomatarium Danicum 1:3:223 (1197).
116. Diplomatarium Danicum 1:3:241 (23.11.1198).
117. J. Overgaard Jørgensen 1989, p. 23.

Compared with these measures, *Jyske Lov* appears to be more draconian. Its article II.73 states that if someone succeeded in cutting in another man's wood and removed the tree from the scene, the owner should sue him for either theft or open theft. This could end up with a death penalty, if the value of the wood amounted to more than half a *mark* (JL II.87).

It has been suggested that these severe penalties may reflect the relative scarcity of wood in Jutland as compared to eastern Denmark.[118] If there was no local deficiency, clearing of woodland could even be considered as economically advantageous.[119] It is, therefore, remarkable that the two provincial laws from Zealand prescribe penalties for illegal cutting at a level comparable to that of the *Skånske Lov*.[120] Still, the regional character of the laws is uncertain.

The number of trees did in itself cause a qualitative distinction in the appraisal of illegal cuttings. The three other provincial laws all employ the concept '*vedstort*' about stolen wood consisting of more than twelve loads. The exact significance of the word is unknown. *Storth* appears to mean 'young tree', but some manuscripts have *withscorth* or *wethækest* instead. The former could have some correlation with *skorte*, i.e. 'be deficient';[121] the latter with a 'stack'.[122] Apparently the term was obsolete already at the time the laws were written down.

Initially, article III.22 of Valdemar's *Sjællandske Lov* states that the ancient mode of acquittal through ordeal by fire was never employed in relation to open theft of land or wood, even by *vedstort*. The three laws then prescribe fines of two *øre* for each load (VSL III.23) or three *marks* (ESL II.78 and SkL 191).[123] And so did also the even earlier *Skånske* and *Sjællandske Kirkelove* (Church Laws).[124]

Even though cutting in someone else's wood was considered as illegal, it was not regarded as 'theft'. This is the most remarkable and persistent trait of medieval and early modern forest legislation. Distinctions were made between illegal cutting in general and theft of manufactured wood lying in the forest floor in particular. According to *Skånske Lov* (209), anyone who did the latter would be considered as a thief punishable by death.[125] In *Jyske Lov* the same violation was only regarded as *ran* (open theft), the maximum penalty for which was a fine of three *marks*.

The basic distinction between open theft and theft (*tyveri*) appears to have been the overt character of the former.[126] Nevertheless, they were both the doings of a

118. A. Hoff 1997, pp. 277 f.
119. E. Oksbjerg 2002, p. 45.
120. *ESL* II.78 and *VSL* III.23.
121. E. Oksbjerg 2002, p. 45.
122. A. Hoff 1997, p. 277.
123. E. Oksbjerg 2002, p. 44: 12 x 2 *øre* = 24 *øre* = 3 *mark*.
124. Article 4 and 7 respectively, Danmarks Gamle Landskabslove I.2, p. 831 f; VIII, pp. 448 f.
125. A. Hoff 1997, p. 281.
126. A. Hoff 1997, p. 241.

Table 1: *Prescribed punitive actions related to woodland management according to Skånske Lov c. 1210.*

offence	**punishment**
one man out of a work team killed during tree cutting	§99: three *mark* fine to his kin
tree cutting in another man's conserved wood	§191: two *øre* fine for each load and return of the wood
cutting twelve loads of wood or more in another man's conserved wood	§191: three *mark* fine or rejection of the accusation by twelve men's oath
caught red-handed cutting in another man's conserved wood	§192: produce some security for the prescribed fine or reject the accusation by six men's oath
carrying more wood with oneself from a conserved wood than is necessary to repair one's carriage	§193: two *øre* fine
ripping the bark of a tree	§194: two *øre* fine for each load and return of the wood
lopping branches of a tree for the cattle	§195: two *øre* fine for each load and return of the wood
cutting a tree in another man's conserved wood in order to recapture a swarm of bees	§196: three *mark* fine or rejection of the accusation with twelve men's oath
taking a swarm of bees belonging to someone else in one's own wood	§197: for theft, death or other corporal punishment; for open theft or rejection of the accusation by two witnesses and twelve men's oath
taking a hawk bound to its nest from an *alminding* or another man's conserved wood	§201: two *øre* fine and return of the hawk to its owner (who bound it) – if the allegation is denied, being treated as a thief

thief and it seems that they could both be perceived as dishonest.[127] In principle, this meant that felons were stigmatised by the local community.

Simple illegal cutting of other people's trees was obviously not regarded in a comparable manner. The most likely explanation of this distinction is to be found in the very conception of property on which medieval legislation rested. Stealing already manufactured wood from the forest floor could lead one to the hangman, whereas cutting and removing trees from the neighbouring parcel merely resulted in a minor fine. The essential difference between the two deeds was the work invested in the wood stack. As in Roman Law and confirmed by several juridical theorists, honest

127. Danmarks Gamle Landskabslove I.2, pp. 566, 616.

offence	punishment
digging out fox cubs from another man's field or wood (if digging is unnecessary, it is legal to take them, and if it is a grown up fox it is even legal to dig for it)	§202: six *øre* fine or rejection of the accusation by six men's oath
not covering up a fox's earth in another man's wood so that a person falls in it and dies	§203: three *mark* fine
making a pen in another man's conserved wood	§204: refunding the harm done to the wood and six *øre* fine or rejection of the accusations by six men's oath
damage done by traps set up in the forest	§205: three *mark* fine or rejection of accusation by twelve men's oath
driving pigs into another man's conserved wood	§206: make good the damage, pay three *mark* fine or reject the accusation by twelve men's oath
removing more nuts or mast from another man's conserved wood than one can carry in one's hat or gloves	§207: two *øre* fine or rejection of the accusation by three men's oath
breaking into another man's conserved wood	§207: make good the damage or reject the accusation by personal oath
taking a tree cut by someone else from a *alminding* before a year and a day after the cutting	§208: compensate for the tree and two *øre* fine
taking another man's wood (no matter where)	§209: death or other corporal punishment (for theft, article 151)
taking windfall from another man's conserved wood	§210: compensate for the tree or reject the accusation by personal oath

work was considered as the very basis of property rights. Consequently, ownership was far more intense when man had manipulated natural resources than when he had not.[128]

Erik's *Sjællandske Lov* nevertheless has an exception from this rule. Article III.42 says that anyone who rips the bark of a standing oak tree should be punished as a thief.[129] This would induce a notably harsher penalty than the two-*øre* fine mentioned in *Jyske Lov*. In some cases even death.

128. A. J. Gurjewitsch 1978, pp. 270 f.
129. Danmarks Gamle Landskabslove V, pp. 317 f.

The most likely explanation of this punishment is the ancient Mosaic prohibition against cutting fruitful trees.[130] In praxis, this appears to have been considered with gravity by medieval jurisprudence. So, in a late thirteenth century trial, it was expressly noted that some citizens had cut down trees in the orchard of the bishop and canons of Lübeck, 'which is inhuman'.[131]

Theoretical legal statements were, however, one thing. To discover how offenders were actually punished is quite another. Here we are unfortunately in the dark. But it is noteworthy that during the fourteenth and fifteenth centuries, clerical institutions more than once threatened to ban offenders who cut trees without permission.[132]

130. Old Testament, Deuteronomy chapter 20, verse 20 and the Second Book of Kings chapter 3, verse 25.

131. K. V. Jensen 1999: p. 221: 'quod inhumanum est'; K. V. Jensen 2001.

132. Diplomatarium Danicum 3:3:124 (23.3.1349); Repertorium Diplomaticum regni Danici Mediaevalis I, no. 6692 (6.5.1434) and II, no. 7921 (17.6.1495).

Chapter 7
Discussion: Common vs. individual

Property rights occupied medieval society intensely. The provincial laws were concerned with little else than how to confront offenders and how to maintain rights through inheritance. In its prologue, *Jyske Lov* of 1241 formulates with great eloquence the basic interests of property rights: 'were the land without a law, then he would have more who could seize more'.[1] Legal persons were, then, men of property – a property, that is, which needed protection.

For the entire medieval period, two major kinds of evidence exist: normative precepts and actual expressions of proprietorship. The very limited number of sources makes it difficult to determine the relationship between the two with certainty. It furthermore complicates an elucidation of any chronological development.

Strong traits of communal resource management dominated forest ownership throughout the period. Firstly, the exploitation of pastoral woodland resources was, in general, common. Secondly, even though individually possessed woods and woodlots did occur, the very content of the property concept remained so indistinct that it would be grossly misleading to compare medieval woodland possession with 'private property' *sensu* Adam Smith.

Even though common use rights appeared to carry on traditions from time immemorial, there is no reason to believe that the property structure of the twelfth and thirteenth centuries was 'original', or that open access commons formed a primary sort of ownership. One refutation of this assumption can be found in relics of iron age field systems discovered under the floor of many forests. Even the medieval historian Saxo considered these remains as evidence of prehistoric activities. So large parts of what was uninhabited *almindinger* in the twelfth century had in fact been arable during the preceding centuries. The property structure of these so-called 'Celtic fields' we are only able to surmise. But several authors assume their distinct physical demarcation by 'lynchets' or low banks to reflect individual ownership.[2]

1. Danmarks Gamle Landskabslove 2, p. 4: 'Varæ ey logh a landhæ that hafthæ hin mest thær mest matæ gripæ'.
2. V. Nielsen 1984; M. Widgren 1990; C. Mascher 1995.

The provincial laws give the immediate impression that individual woodlots were a contemporary phenomenon in the thirteenth century. This corresponds with the general significance of separate management, which characterises the agricultural articles of the same laws. If this alleged importance of individual property and organisation – which appears largely incompatible with the state of the early modern period – was real, it must have been subject to a noticeable reduction during the centuries that followed.

This line of development might not seem very likely, and such a reduction is hard to trace in the written sources. First of all, however, we should avoid the preconceived notion of property rights as developing uninterruptedly from common to individual ownership. Secondly, it is not all that implausible that the crisis of the fourteenth century had severe repercussion on land division and management. The great number of forest perambulations known from the following centuries (see pp. 140 ff) might reflect a redefinition of property boundaries on the village outskirts.

For the period in question, the interdependence between property structures, woodland management forms, tree production and the anthropogenic influence upon woodland appearances is unclear. A few connections might, however, be deduced.

Whereas individual organisation seems to have characterised arable farming through the ages, one aspect of forest management might be common in its genesis, namely the process of cutting trees. Forest work was hard and dangerous, and the handling of large trees suggests the advantages by working together. Until the introduction of motorised chainsaws by the middle of the twentieth century, work teams of two carried out most forestry work.[3] Correspondingly, scattered evidence suggests that such work was co-ordinated in work teams during most of medieval and early modern period.

Article 99 of *Skånske Lov* (table 1) says that if one man out of a work team of three was killed during tree-felling, then the remaining two should pay a compensation of 3 *mark* to his kin.[4] This customary mutual insurance was later abandoned by Christian I's privileges for Skåne in 1481.[5]

In cases where the wood was divided among several peasants, the clause implies that co-operation took place across property boundaries; that neighbours, in other words, assisted each other. A similarly collective organisation of tree-cutting seems to have been in force even during the late eighteenth century. In the small hamlet Nørre Tulstrup, the tenants repeatedly worked together in their woodlots. Together with two other peasants, Christen Andersen, for instance, cut down a beech tree in

3. E. Bøllehuus 1999.
4. A somewhat similar clause is found in Lex Visigothorum III (E. Sjöholm 1988, p. 303) and Lex Saxonum 54 (A. Hoff 1997, p. 415).
5. Den danske rigslovgivning 1397-1513, no. 35 (9.3.1481).

Krog Skov in February 1788, and in April they were 'in Krog Skov, splitting and carrying home our common tree, each of us five loads'.[6]

If this was so, we cannot rule out the possibility that these work teams corresponded to the *bol* assessment of the village; so that the tenants united in a *bol* cooperated. At least, by the late sixteenth century this appears to have been the case in the Zealand town of Holbæk. Here the bylaw includes clauses regarding cases where an inhabitant is found to 'to cut from his wood in any *bol* before the determined time when the *bol* brothers determine to cut'.[7]

Since palynological evidence only refers to the species composition of mature, pollinating trees, it is unable to tell us about the relative distribution of young and old trees, for example. Accordingly, we have no substantial indications on the aspect later most closely connected with the ownership structure, i.e. the distinction between overwood and underwood. Still, evidence from analyses of coffin planks from Lund suggest that dense stands of straight oak trees were replaced by more open woodland.[8]

Furthermore, regional differences in the abundance of woodland are evident from pollen analyses and historical evidence alike. In thirteenth century documents a distinction was made, for example, between districts 'without wood' and areas 'above the wood', i.e. lying close to it.[9] So it is evident that wood shortage was or became a local or even regional problem during the Middle Ages (fig. 10). Accordingly, trade with strategically important timber was regulated,[10] even though our knowledge about trade with wooden products is regrettably defective as compared with the situation, say, in England.[11] It is, however, highly probable that a discriminate shortage of wood made a significant impact upon the property rights manifestations of medieval Denmark.

6. Fæstebonde i Nørre Tulstrup, p. 58: 'I Krogskoe, kløv og hent vor fæles træe hiem, hver 5 læs'.
7. Danske Vider og Vedtægter 3, p. 106 (1581): 'at hugge af sin skouf i nogit boel føren dend bestemte tid kommer, at alle boels brøderne vidtager at ville hugge.'
8. T. Bartholin 1988, p. 285.
9. Kong Valdemars Jordebog I, p. 13: 'vtæn scogh' and 'Ouæn scogh'.
10. Diplomatarium Danicum 3:4:206 (*c.* 1354).
11. J. A. Galloway, D. Keene & M. Murphy 1996.

Part III

Diversification of property rights 1350-1750

Chapter 8
Introduction

A society recovered and rearranged

The general crisis of the fourteenth century marks a rupture in Danish history.[1] Yet it is uncertain whether a general economic decline occurred simultaneously with the financial relapse of the royal treasury in the early part of the fourteenth century. To some scholars, the population increase came to a halt around 1300, when the natural resources available with the technology of the time were fully employed. Rural society ostensibly reached the 'Malthusian limit' and, apart from coastal areas, settlement expansion ceased.[2] On a regional scale, lack of manpower seems to have been tangible already around 1320.

To others, no major setback can be observed prior to the 'Black Death' (1348-50).[3] Based upon English research, Nils Hybel concludes that 'by the beginning of the fourteenth century, Europe was undoubtedly characterised by extensive poverty in the countryside but the misery did not develop into a socio-demographic problem which made the manorial system collapse'.[4] Furthermore, the alleged post-plague 'fourteenth century crisis' was only detrimental to large-scale farming but not to rural economy as a whole.[5]

Most historians of the first half of the twentieth century considered the fourteenth century economically as a perpetuation of the 'golden age' of Valdemar's kingship.[6] But in 1938, Aksel E. Christensen concluded that a significant population decrease took place from the thirteenth to the sixteenth century.[7] C. A. Christensen

1. The following overview is based upon K.-E. Frandsen 1988, H. Gamrath & E. Ladewig Petersen 1980, K. J. V. Jespersen 1989, H. C. Johansen 1979, E. Ladewig Petersen 1980, B. Scocozza 1989, F. Skrubbeltrang 1978, M. Venge 1980 and A. Wittendorff 1989.
2. E.g. C. A. Christensen 1964; H. Paludan 1977, pp. 411 ff; E. Porsmose 1988, p. 211; K. Hørby 1989, pp. 199 ff; T. Dahlerup 1989, pp. 79 ff.
3. E. Ulsig 2001.
4. N. Hybel 1994, p. 68: 'Europa har uden tvivl i begyndelsen af det 14. århundrede været præget af udbredt fattigdom på landet, men elendigheden udviklede sig ikke til et samfundsmæssigt demografisk problem, som fik den europæiske stordrift til at bryde sammen'.
5. N. Hybel 1995; E. Ulsig 1996.
6. S. Gissel 1972.
7. A. E. Christensen 1938.

subsequently supported this thesis in several studies.[8] Later, the idea of a general 'crisis of the late Middle Ages' formed the basis of the 'Nordic Deserted Farms and Villages Project' in which an international comparison was attempted.[9]

The studies indicated a severe economic and demographic decline after 1350. In Jutland, the construction and extension of churches ceased. And all over the country the number of deserted farms and villages increased. Meanwhile the price of landed property appears to have declined. Still, the evidence of a general crisis before the Black Death remains scanty, even though singular years seem to have been marked by crop failure and hunger.[10]

In general, the fifteenth century appears as a period of economic expansion. To the people surviving the Black Death, extensive natural resources were available and, placed on the periphery of economic growth in Western Europe, Denmark could occupy the place of a major supplier of provisions. Firstly, manorial economy supported by trade privileges enhanced the traditional production and export of oxen to the expanding urban societies of Northwest Europe.[11] Secondly, the coastal areas in the Sound and the Limfjord regions experienced a significant increase in fishery creating the foundation of large-scale exports of herring.[12]

Even if a general economic crisis before the late 1340's is unsupportable, it remains beyond doubt that the repetitive epidemics from then on made a considerable impact on population density and as a result on social structure.[13] During the fifteenth century, tenancy in estates with a certain manorial production in the *enemærke* (demesne) based upon villeinage became the prevalent mode of landed possession.[14] Tenancy farms with somewhat more extensive adjoining lands than their early medieval predecessors (*coloni*) and their European counterparts became dominant. And gradually a class of cottagers with smallholdings together with servants supplied the manpower necessary to maintain this peasant economy.

Nowhere were the core issues of late medieval tenancy formulated more precisely than in an early fourteenth century sermon: 'The superiors owe their inferiors protection, justice and guidance, whereas the inferiors are bound to exhibit obedience, deference as well as tangible services to their superiors'.[15] The new estate system was

8. C. A. Christensen 1960-62; idem 1964.
9. S. Gissel et al. 1981.
10. N. Hybel 1997.
11. P. Enemark 1987.
12. B. Stoklund 2000.
13. E. Ulsig 1991.
14. E. Ulsig 1968.
15. C.f. A. E. Christensen 1978, p. 51: 'De overordnede skylder deres underordnede beskyttelse, retfærdighed og retledning, mens de underordnede var pligtige til at vise deres overordnede lydighed, ærbødighed samt kontante ydelser'.

dominated by a wide geographical dispersion of peasant holdings.[16] This in itself contributed to a certain peasant communalism and self-determinism, since an absent lord did not interfere with everyday matters.[17] As stressed by Hans Henrik Appel, amongst others, this should not, however, lead us to underestimate the internal clashes of interests among the peasantry.[18]

General tenants' duties related to field cultivation were called '*skyld*' whereas rents connected with other sometimes more marginal natural resources were labelled '*herlighed*'. The legal conception of the late Middle Ages considered *herlighed* to be characteristic of *dominium directum*.[19] So, when two different legal persons received *skyld* and *herlighed* of a certain tenancy respectively, the latter was regarded as the proprietor. Nineteenth century jurisprudents on the other hand tended to consider *herlighed* as belonging to public law.[20]

According to a 1569 register of church lands in Skåne, the position as vicar and not the person occupying it held the *dominium* of local church tenants. In other words, it was regarded as the proper owner of these farms. A typical wording would be, that '*dominium* with *stedsmål* (a fine paid at the commencement of a tenancy) and all other privilege which is progress, fines, cartage and other the like has been with the vicar since time immemorial and nobody else'.[21]

The transformation of property structures

The political fabric of Danish society experienced some crucial changes during the first decades of the sixteenth century. Since 1397, Denmark, Norway and Sweden had constituted a rather unstable political union. But in 1520 its leader, Christian II (1513-23), orchestrated a massacre of his opponents in Stockholm. Three years later the young nobleman Gustav Vasa was elected as Swedish king whereas Christian was forced to leave Denmark, never to return as monarch. His uncle Frederik I (1523-33) replaced him.

In the early 1530's a mixture of 'traditional' peasant risings and support for Christian's mercantilist and anti-aristocratic kingship lead to several years of civil war (*Grevefejden*). In 1536 the two last strongholds of his adherents – Malmø and Copenhagen – finally surrendered, and Christian III (1536-59) was appointed as

16. E. Ulsig 1968, pp. 306 ff.
17. A. Bøgh 1996.
18. H. H. Appel 1999, pp. 237 f.
19. N. G. Bartholdy 1991.
20. A. Aagesen 1872, p. 67.
21. Lunds Stifts Landebok 1, p. 15: 'Dominium mz stedtzmaalid och all anden herlighed, som er giesterij sagefald eckir och andett saadant haffuir aff ærilde werrid hoss sognnepresten och hos ingenn andenn'.

new king. As the peasant and bourgeois revolts comprised notable anti-clerical components and the new king was a Lutheran, the termination of the three-year *interregnum* was followed by basic church reforms.

In August the Catholic bishops were detained and the church lands confiscated. And these measures were formally endorsed by the estates at a meeting in October. This explicitly happened to make the crown wealthier so that further taxation of the population could be avoided. So the compound process that introduced Lutheranism into Denmark while detaching the country from the Church of Rome resulted in a stupendous transfer of landed property. By 1500, 30-40% of all land belonged to the church – in the first place to monastic institutions. A century later only glebe lands and scattered parish church holdings equalling approximately 3% were left. The principal winner of this transfer was the crown.

The decades on both sides of 1600 were characterised by increasing efforts by both the crown and noble landlords to establish a system of intensely managed manors based upon the forced labour of their tenants. In order to achieve this goal, they endeavoured to bring together the peasant holdings in their possession by means of exchange.[22] During this process, certain preferences regarding landed property in general were clearly exposed. Areas with woodland and other pastoral resources were valued the highest, and crown land acquisitions did accordingly concentrate in areas such as eastern Jutland. As the juvenile Christian IV wrote in a Latin school essay, 'Actually a place from which the wood is distant is the worst choice [for a dwelling]'.[23]

Several tenancies – even entire hamlets – were abolished in order to create or enlarge manorial *enemærker*. Until 1650 this applied to at least 1300 farms west of the Sound, and probably considerably more.[24] As intended, a relative increase in manorial production took place.[25] It was based upon the agrarian production of tenants, who were obliged to perform labour services on the manor of their lord. Still, by 1688, 32% of all manors in eastern Denmark (and 8% in Jutland) were still not enclosed from the surrounding peasant villages.[26]

A great variety of field systems characterised arable farming. On the better soils various kinds of two-, three- or even five-field rotation dominated, whereas field-grass systems without separating fences between the field units prevailed in Jutland.[27] In all cases, however, stubble and fallow pasture was common as was eventual participation in *overdrev*.

22. T. B. Bang 1918.
23. Liber compositionum no. 145: '& est reversa hvius loci electio pessima, a qvo silva longe distat'.
24. G. Olsen 1957, pp. 161 ff ; E. Porsmose 1978; B. Fritzbøger 1984.
25. E. Ladewig Petersen 1974; C. Porskrog Rasmussen 1999.
26. H. Pedersen 1915-17, p. 43.
27. K.-E. Frandsen 1983.

Hence, the lands of the great majority of Danish farms took part in the 'common fields' of village communalism. The only notable exceptions were enclosed manors and scattered single farms. Both types of settlements, moreover, exposed a conspicuous propensity for wooded landscapes.[28]

A feudal society

During the late Middle Ages, the Danish nobility strenuously attempted to 'become king over their tenants', i.e. to gain full jurisdiction over their subordinates.[29] The nearest they came was when the coronation charter of 1523 granted them 'full power of life and death' over their tenants.[30] So until the late eighteenth-century land reforms the cardinal concept of economical and social relations was tenancy: the feudal interdependence between a land-owning lord and his subordinate peasants. To a general protection of the tenants against legal or physical aggression and the use-rights to the natural resources of his farm corresponded an obligation to pay rents and bring about the (undefined) workforce necessary for the management of the manorial *enemærke*.[31] Normally, the tenant owned the livestock, tools and other movables of his farm. But in some regions, he was even the proprietor of the farm buildings (called *superficiærfæste*).[32]

It is impossible to estimate the exact number of freeholders as compared with tenants before the beginning of the sixteenth century. At that time the group constituted no more than approximately 1/7 of the entire population.[33] So, if they had been more in the thirteenth century, a transition from freehold to tenancy must have taken place during following centuries.[34]

Replacement of an increasing tax burden with somewhat more stable seigneurial rents should explain the alleged transition. But, as pointed out by Erik Ulsig, nothing prevented the landlords from seizing the total tax revenue as rents thus abolishing the supposed incentive of a large-scale transition.[35] Meanwhile, peasant

28. E. Porsmose 1981, pp. 119 f.
29. C.f. A. Bøgh 1994, p. 97: 'konge over sin landbo'.
30. Samling af Danske Kongers Haandfæstninger, p. 72
31. H. H. Fussing 1942.
32. J. Mikkelsen 1997, p. 41; H. H. Appel 1999, pp. 299 ff.
33. E. Porsmose 1988, p. 259; the figure is based upon rather uncertain appraisals c. f. A. E. Christensen 1945, p. 116.
34. K. Erslev 1898-1905, pp. 196 f; E. Arup 1932, p. 59 and (more cautiously) A. E. Christensen 1945, pp. 116 f
35. E. Ulsig 1980, p. 115.

status in regard to the village community appears to have remained unaltered, and Helge Paludan consequently moderates the impact of a transition.[36]

Lately, Michael Gelting has proposed the obvious possibility that by the thirteenth century relations between landlord and tenant rested upon oral custom and were accordingly not included in written legislation.[37] This explains the over-representation of freeholders in legal texts. But maybe the whole 'problem' about the transition from freehold to tenancy is a red herring. For, as put by Ole Fenger, what was at stake in medieval society was rather the question who was entitled to rents and taxes than formal social status.[38]

Traditionally, freeholders have been considered as descendants of the originally free members of the tribal Germanic society. This is a conception that corresponds well with an (implicit) notion of the primeval character of private property. In 1925 Erik Arup, for example, wrote that 'the rights of private property to land established by the toil invested in its cultivation by one self or by one's kin was from the very beginning fully recognised with no opposition, but on the contrary full agreement'.[39] Yet, it runs counter to the conception of aboriginal *Gemeinwesen* of Germanistic jurisprudence.

In 1975 this idea of an original freehold status was seriously questioned by Anne Katrine Gade Kristensen.[40] Based among other things upon studies of Viking Age institutions in England, her analysis concluded that Danish freeholders had a great resemblance with the *Königsfreie* well known in Central Europe, i.e. strategically localised military settlers living in village communities and rewarded with a certain hereditary property right to their holding. The indefinite element of freeholders might, therefore, have been the result of early medieval royal attempts to consolidate central authority rather than the relics of ancient local self-determination.

In general, Danish peasants were not serfs.[41] Denmark belonged and continued to belong to the Westalbian sphere of *Grundherrschaft* – not to that dominated by the 'second serfdom' of *Gutsherrschaft* in the east.[42] Strong elements of personal subordination did, however, evolve during this period. Until 1702, the tenants of Zealand and its southern archipelago were (with a nineteenth century semantic construction)[43] subjected to *vornedskab* (adscription). Whereas late medieval texts usually describe tenants (*fæstere*) as *vornede*, the concept developed into meaning a more

36. H. Paludan 1977, p 421.
37. M. Gelting 1991, p.34.
38. O. Fenger 1983, p. 137.
39. E. Arup 1925, p. 70: 'den privatejendomsret til jorden, der var skabt ved eget eller slægtens arbejde med dens opdyrkning, lige fra først af ingen modsigelse mødte, tværtimod fuldt anerkendtes'.
40. A. K. Gade Kristensen 1975.
41. J. V. Jensen 1994.
42. J. Banaji 1977, pp. 22 f; H. Kaak 1991.
43. First formulated by C. F. Allen 1881 (in 1840), pp. 234 ff.

serf-like tenancy form. Its most distinct feature was adscription of the male population to the estate in which they were born. The principal purpose then appears to have been an assurance against shortage of manpower.

Against this background it seems obvious to relate the development of adscription to the demographic collapse following the Black Death. This was exactly what Johannes Steenstrup did when he analysed the genesis and content of the institution: 'Regard for the fact that the land was in need of cultivators gave the lord the right to force the peasant to stay at his native soil'.[44] Yet, based upon a thorough survey on the written evidence available, Frank Pedersen concludes that Steenstrup's assumption is unsupported, founded as it is upon purely normative data (i.e. Lollands Vilkår 1446).[45] Consequently, he regards adscription as a late fifteenth century phenomenon and therefore not immediately related to the population crisis of the previous century.

During the early sixteenth century, the essentially feudal traits of Danish society became still more lucid. Economic growth instigated a notable polarisation of the land-owning classes. By 1520 the nobility consisted of a mere 250 families. During the following century, 128 new families were admitted to the estate whereas another 194 died out.[46] And in broad terms this development reflected an extinction of the gentry. A great number of minor landlords were reduced to mere freeholders whereas a few aristocratic lineages became exceedingly well-to-do.

Meanwhile, the number of freehold peasants experienced a noticeable reduction during the sixteenth century. Its scope is, however, questioned. According to J. A. Fridericia, the penal consequences of the participation of many freeholders in the *Grevefejde* led to 'the excessive mowing down of freehold farms' in Jutland.[47] In this process, previous freehold woods were converted to crown land.[48] In opposition to this view, Søren Balle has argued that about 30% of all farms were freeholders as late as 1548.[49]

This figure might be exaggerated, for by the middle of the sixteenth century the great majority of Danish peasants were tenants of either crown or nobility. Furthermore, whereas Christian II had, in fact, attempted to introduce various kinds of legal protection for their status, the subsequent political milieu was dominated by landowner interests. This became exceedingly evident with the coronation charter signed by Frederik I in 1523 that gave all landlords full rights to impose fines on

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44. J. Steenstrup 1886-87: 'Hensynet til, at Jorden savnede Dyrkere, har givet Jorddrotten Ret til at tvinge Bonden til at blive ved Stavnen'.
45. F. Pedersen 1984, cf. also M. Hertz 1978.
46. H. Gamrath & E. Ladewig-Petersen 1980.
47. J. A. Fridericia 1889-90, p. 545: 'den store Nedmejning af Selvejergaarde'.
48. E.g. Kancelliets Brevbøger 23.3.1570.
49. S. Balle 1992, pp. 89 ff, 309 ff.

their tenants. And it was further emphasised by two recesses in 1547 and 1558, according to which a landlord was even granted the right to 'exploit his estate as he best can and sell it to whom he wishes'.[50] Still, it is questionable if the clause was really meant as a general 'licence to exploit'. It rather focussed upon trade relations.[51]

During the first half of the sixteenth century, the average duration of tenancies appears to have been relatively short.[52] In 1523 Frederik I issued an ordinance which has been interpreted as a pledge for life-long tenancies to balance the simultaneous consolidation of feudal dominance. It is, however, highly doubtful if this was actually its intention, and in reality the variation in duration continued to be considerable until a gradual consolidation of tenancy relations during the eighteenth century.

From aristocratic government to absolutist rule

In the late thirteenth and fourteenth centuries, extensive parliamentary gatherings (*Danehof*) in collaboration with the narrower *meliores regni* legislated together with the king. And from the beginning of the fifteenth century, their function was assumed by the royal *rigsråd* (council) consisting of clerics and noblemen. It was, therefore, the land-owning classes that participated in all medieval legislation, and after 1500 formal public confirmation is no longer recorded.[53]

An individual royal jurisdiction appears to have been acknowledged in certain cases, mainly those concerning the royal house carls even from the twelfth century.[54] But after the 1320's *Kongens Retterting* functioned as Supreme Court where the king, or judges appointed by him, ruled.[55] At the provincial court (*landsting*), the king had already by 1300 achieved a determinant influence through the instalment of court executives, and from the beginning of the fifteenth century royal representatives took over the supervision of the *herredsting* (district court) as well. So public prosecution and law enforcement as well as conviction was increasingly considered the crown's concern.[56] Finally, the *Danehof* served in some events during the late fourteenth and fifteenth centuries as Supreme Court.

During the fifteenth century a clear sequence of instances was fixed, which was to

50. Corpus Constitutionem Daniæ 1, no. 1 (p. 29): 'giøre seg sit eget gots saa nyttigt, som hand kand, och sielge det, hvem hand vil'.
51. E. Ladewig-Petersen 1980, pp. 197 f.
52. F. Skrubbeltrang 1978; E. Porsmose 1983.
53. P. J. Jørgensen 1940, pp. 46 ff.
54. T. Riis 1977, pp. 311 ff.
55. H. Lerdam 2001, pp. 21 ff.
56. K. Hørby 1980A, pp. 81 ff.

last for centuries. From the district court, or in the case of towns the town court (*byting*), lawsuits went to the provincial court in case of appeal, with the royal *retterting* (after 1660: *Højesteret*) as Supreme Court. In general, the court system appears to have acted justly notwithstanding the fact that the legal framework upon which it was based was anything but impartial.[57]

Corresponding to the reformation of the clerical constitution in the years following 1536 was that of the secular constitution. As the crown lands were enlarged, their management was centralised. And so were the political institutions. The *rigsråd* was diminished and the individual power of and economic benefits to the local county governors (*lensmænd*) were restricted. As a result of the reform, county governors who had previously in some regards been comparable with actual royal vassals tended to act still more like simple civil servants.

The centralising tendencies of royal politics even from the early post-reformation years clearly included the germ of absolute rule. By the coronation of the young Christian IV in 1596, the speech held by the bishop of Roskilde, Peder Vinstrup, had strongly theocratic elements.[58] But, from the point of view of power balances, the immediate result of the reformation was rather a *monarchia mixta* in which the balancing point between king and nobility was gradually pushed to the advantage of the first.

From 1563 to 1645 Denmark and Sweden fought four wars against each other. In 1657 Denmark declared yet another war against this new European great power, and during the following three years the country suffered under a devastating occupation. Peace, involving the renunciation of Danish provinces east of the sound, was re-established after intense international intervention in 1660. In the autumn of that year, estate representatives were summoned in Copenhagen in order to solve the financial problems originating from these disastrous wars. And during the meeting, the king gathered sufficient support to declare kingship hereditary and, later, absolute.

Through this collapse of the system of 'checks and balances' established in 1536, the *rigsråd* lost its part of the power. The king was, by the grace of God, the sole sovereign. As the first country ever, Denmark even had a written (but until 1709 secret) absolute constitution in 1665. In the not altogether unbiased words of the English envoy Robert Molesworth, 'the present state is fixed and durable; and [...] the people with great difficulty may perhaps change their masters, but never their condition'.[59]

The establishment of absolute government caused a significant increase in the central state bureaucracy. Yet in a strange way feudalism was renewed. As formulated

57. H. Fussing 1942.
58. F. P. Jensen 1967.
59. R. Molesworth 1694, p. 271.

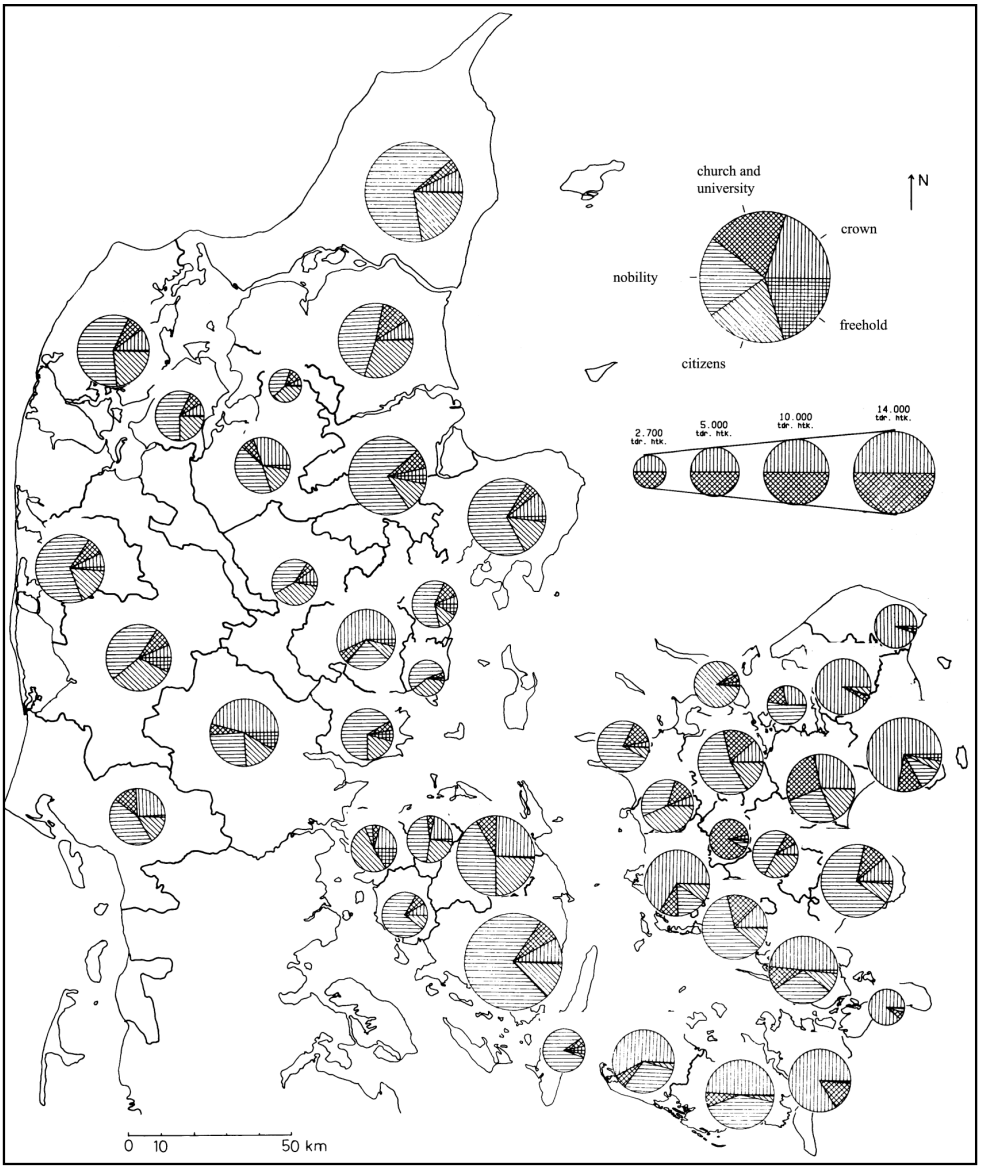

Fig. 13: *Distribution of landed property at county level in 1688. After K.-E. Frandsen 1988, p. 191.*

by Perry Anderson, absolutism was in general nothing but 'a re-deployed and recharged apparatus of feudal domination'.[60] In the fatal year 1660, 95% of superior state officials belonged to the old noble families.[61] Sixty years later, their number was

60. P. Anderson 1980, p. 18.
61. S. Aa. Hansen 1964, pp. 307 ff.

reduced to 25%. 'Nobility by appointment' substituted by 'nobility by birth'. In 1671 a set of privileges for this new nobility was issued which combined a specific lower limit of land ownership, certain restrictions regarding property alienation, tax exemption and a great range of state duties as well as their corresponding revenues. Landed property based upon these privileges functioned as entailed estates (*majorater*) and was divided into three classes. Until 1720 ten so-called *grevskaber* (counties), fifteen *baronier* (baronies) and ten *stamhuse* including a total of 60 entailed and 43 ordinary estates were erected. As had been the case with pre-reformation church lands, these new privileged estates remained unaffected by inheritance division.

Ordinary private property, in contrast, was habitually divided by inheritance.[62] But from 1682, a distinction was made between *complete* and *incomplete* estates. To be complete and to benefit from the consequent tax-exemption of the *enemærke*, the estate should have tenancies worth at least two hundreds *tønder hartkorn* (a customary land measure virtually meaning 'barrels of hard corn') within a perimeter of fifteen kilometres from the manor.[63]

A number of new, privileged estates were based upon former crown lands that had been mortgaged during the war. In 1660 the financially hard-pressed crown was unable to redeem major parts of these lands and instead their holders achieved noble titles. So major concessions of crown lands took place during the early years of absolute rule. In 1650 about 50% of all landed property belonged to the crown. In 1688 the figure was 27%.[64] And during the 1710's, restructuring of the crown lands in order to let them supply the national army caused further alienation.[65] So from *c.* 1720 until the almost complete abalienations of the landed property of the crown during the 1760's, the great majority of crown lands was clustered in so-called regimental districts, of which twelve were established.

As a consequence of the decreasing crown revenue from feudal rents, an ever-increasing part of the seventeenth and eighteenth century state finance was based upon taxes.

Economy, population and natural resources

As the most severe consequences by far of the late medieval crisis were over, the sixteenth and early seventeenth centuries provided a stable period of demographic growth. In round figures the total population of the Danish kingdom was *c.* 600,000

62. S. Iuul 1956.
63. G. Olsen 1957, p. 114.
64. K.-E. Frandsen 1988, p. 175.
65. K. C. Rockstroh 1925.

in 1500; one and a half centuries later, it had increased to approximately 825,000.[66] Following the loss of the provinces east of the Sound in 1660, the population of the remaining kingdom totalled *c.* 720,000 in 1735.[67]

During the sixteenth century, numerous farms appear to have been divided, even though this had repeatedly been prohibited since the reign of Frederik I.[68] In parts of Jutland, the number of tenants in 1599 exceeded the number of farms by 15%.[69] Hence several farms were in the joint possession of two tenant families. But from the middle of the seventeenth century, the major part of the population surplus was directed towards a growing class of cottagers. On Zealand, the relative average share of cottagers among the rural population increased from 43% in 1700 to 59% in 1771.[70]

Corresponding to the positive sixteenth century demographic development was a steady economic progress. From 1540 to 1600, the average price of landed property increased by a factor of six.[71] Landlords were not alone in experiencing the increasing wealth. To many peasants as well the 'price revolution' resulted in notable prosperity. In particular this is regarded to have been the case in areas dominated by woodland and consequently extensive pastoral resources.[72] Nevertheless, coastal trade and participation in the herring fisheries of the western Baltic appear to have had even greater impact.[73] An assessment of the average fortune per farm in parts of North Zealand *c.* 1520 shows that at a regional level, wealth was most evident in coastal areas – not in the densely wooded centre of the region.[74]

Both on a regional and a national scale, the gross population increase of the early part of the period was suspended by repetitive wars and epidemics during the seventeenth century. Denmark was severely marked by the general crisis of that century.[75] To a certain extent, climatic fluctuations might have influenced the yields negatively.[76] Most severe, however, were the consequences of widespread outbreaks of plague in 1654 followed by the Swedish occupation of 1657-60.[77] This double scourge resulted in a momentous demographic breakdown, the exact extent of

66. A. Wittendorf 1989, p. 24; E. Ladewig-Petersen 1980, pp. 41 ff.
67. O. Feldbæk 1990, p. 25.
68. K. J. V. Jespersen 1989, p. 51; E. Ladewig-Petersen 1980, p. 66.
69. F. Skrubbeltrang 1971; see also H. H. Appel 1999, pp. 240 ff.
70. F. Skrubbeltrang 1940, p. 53.
71. A. Wittendorff 1989, p. 234.
72. A. Wittendorff 1989, p. 44.
73. B. Stoklund 2000, pp. 13 ff.
74. De "rige bønder" i Nordsjælland.
75. N. Steensgaard 1969-70; J. de Vries 1976.
76. J. M. Grove 1988; G. Utterström 1988.
77. E.g. Aa. Fasmer Blomberg 1973.

which is unknown. Records of numerous deserted farms and villages during the 1660's clearly reflect the situation.[78]

The general economic depression of the 1660's lasted for decades. Repeated years of poor harvests accompanied it, and the level of taxes to the novel absolute state increased at least until the 1720's.[79] New hardships recurred during and after the Great Nordic War 1709-20 so that by 1730 the national economy was seriously affected by a declining market and consequently falling prices for agricultural products. In this situation the government intervened energetically. Yet, even though its vigour could be considered as archetypical for the reform process that would totally overshadow the later part of the century, its ends did not embody the same liberal ideas that dominated that period. Its intervention primarily represented the same mercantilist politics that had been current since the beginning of the sixteenth century.[80]

In 1731 grain taxes were cut and the traditional prohibition against farm reduction was withdrawn.[81] Two years later *vornedskabet*, that had been released on Zealand in 1701, was reintroduced in the entire country and called *stavnsbåndet*.[82] Until the age of 36, no boy or man was allowed to leave the estate of his birth. The purpose was dual: to assure a regular recruitment to a standing, national army and to restrain the (compulsory) manorial workforce. To the peasantry, adscription retrospectively became a symbolic summation of feudal suppression.

In 1735 imports of grain to Denmark and the southern parts of Norway were finally banned, whereby a *de facto* monopoly in the Norwegian grain trade was established. At the same time a new government office, *Kommercekollegiet*, was founded to support and coordinate the growth of the national economy.

Woodland management and wood consumption

The demographic crisis of the fourteenth century is reflected in palynological records. According to both local and regional pollen analyses, the settlement 'contraction' resulted in land use de-intensification and tree re-growth, which reshaped large areas of woodland on former grass or farmland.[83] But after some time, the

78. H. Pedersen 1913.
79. M. Mogensen 2000; B. Fritzbøger 1989B; C. Rafner 1986.
80. K. Glamann 1983.
81. O. Feldbæk 1990, p. 153.
82. Some dispute takes place as to whether the general *stavnsbånd* was actually introduced in 1701; c.f. J. Holmgaard 1999; see, however, also G. Lind 2000.
83. S. Th. Andersen et al 1983; B. Aaby 1983; S. Th. Andersen 1984; M.-J. Gaillard & B. Berglund 1988; B. Berglund 1991; B. Aaby 1992; S. Th. Andersen 1992; B. Odgaard 1994; P. Rasmussen & S. Th. Andersen 1997; M. Lindbladh 1998.

subsequent demographic and economic revitalisation resulted in a renewed pressure on the natural resources. So the overall arboreal pollen curve declined after the eleventh century (fig. 2).

By 1500 woods were scattered in the Danish landscape in a manner which in broad terms was comparable with the one reflected in maps three hundred years younger. Eastern Jutland and the archipelagos of Funen and Zealand all had large areas dominated by woodland, where manufacturing of timber products augmented a peasant economy based mainly upon animal farming. Only northern Skåne, Halland and Blekinge, however, had wastelands totally marked by forest. And these areas were, consequently, major suppliers of timber and firewood to the rest of the country.[84] In the first half of the seventeenth century, for example, large quantities of oak-bark for Copenhagen tanneries were purchased in Blekinge.[85]

The overall woodland acreage appears to have decreased at least until the middle of the seventeenth century. An association of various factors dictated this process of deforestation. Firstly, the employment of wood locally exceeded the current regrowth. Secondly, woodland was regularly converted to arable by clearing. And, finally, extensive herds of browsing animals effectively impeded forest tree regeneration.[86]

During the 400 year period, still more particular wood products were imported from abroad or from other parts of the realm.[88] By 1600 all timber in the naval dockyard in Copenhagen, for example, originated from Norway or provinces east of the Sound.[89] The demand for timber increased during the extensive building activity of the late sixteenth and early seventeenth centuries. In several cases local woods proved unable to meet the demands.[90] Furthermore, the general demographic and economic prosperity of the period encouraged clearings to extend arable land as well as increasing pastoral needs. In general, therefore, the period 1500-1650 should be considered as one of deforestation.

As recession approached, the directions of forest development changed. The timber and fuel demands of the growing state apparatus were still immense, not least for army purposes, as two-thirds of all state spending during the early absolute

84. Å. G. Sjöberg 1973; M. Swensson 1969.
85. Kancelliets Brevbøger 29.7.1634 and 19.3.1646.
86. The general woodland development of Denmark 1500-1800 is described in B. Fritzbøger 1992.
87. V. Mikkelsen 1949; V. Mikkelsen 1954; S. Th. Andersen et al 1983; B. Aaby 1983; S. Th. Andersen 1984; M.-J. Gaillard & B. Berglund 1988; B. Aaby 1992; S. Th. Andersen 1992; B. Odgaard 1994; P. Rasmussen & S. Th. Andersen 1997.
88. Ø. Borggreen 1994.
89. Rigsarkivet, Søetaten, Marinearkivet før 1655, Bremerholms Tømmerregnskaber 1594-1658.
90. T. Kjærgaard 1994A, p. 23.

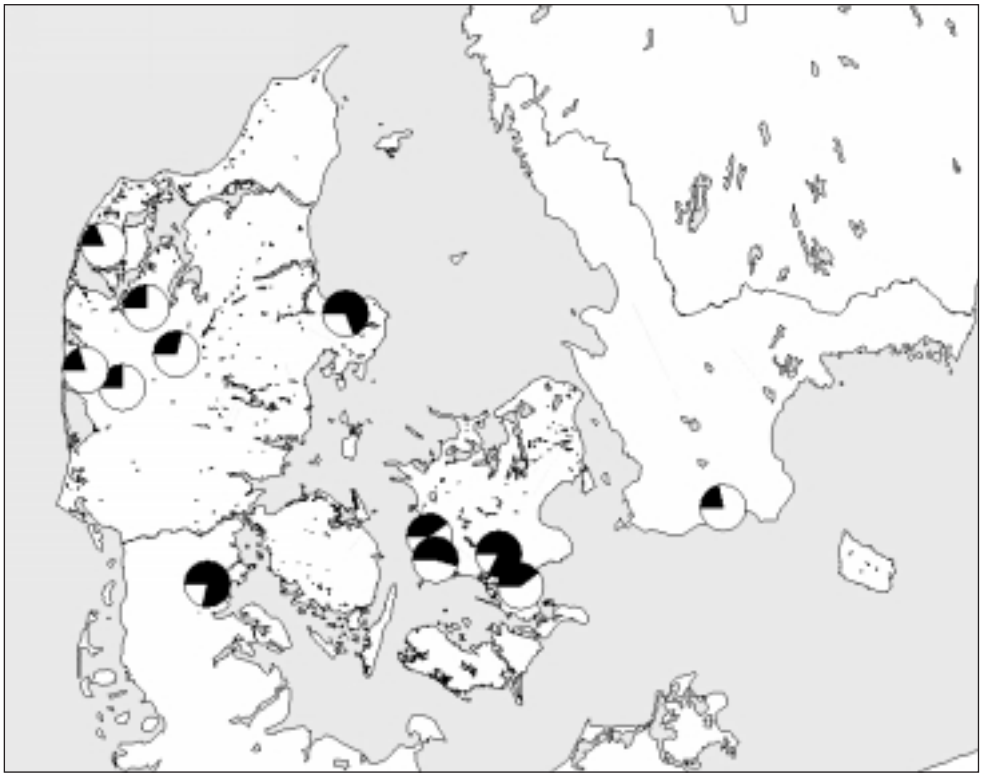

Fig. 14: *The relative content of woodland pollen types (black) in regional pollen samples dated c. 1500.*[87]

era were military.[91] But local demands for timber and fuel wood as well as pasture and arable decreased parallel with the collapse in population and economic activity. As a result, woodland acreage appears to have been largely unaltered during the last half of the seventeenth century, whereas the forest structure was transformed. The dominance of beech over oak was enhanced, and young trees and re-growth replaced mature mast and timber producers. In other words: underwood took the place of overwood.

91. L. Jespersen 1984.

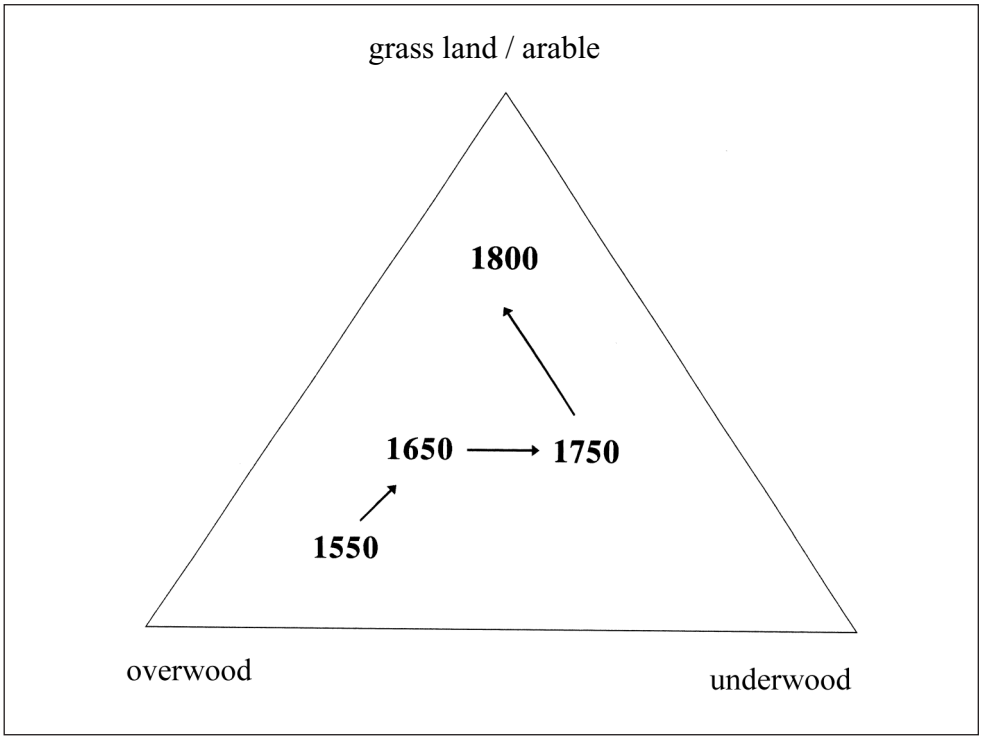

Fig. 15: The general landscape development of eastern Denmark c. 1500-1800. Until the middle of the seventeenth century, a decrease in woodland acreage appears to have been universal. The following hundred years, conversely, were distinguished by a fairly invariable acreage, whereas the dominant woodland form changed from overwood to underwood. Finally, a new deforestation period followed the economic prosperity of the middle of the eighteenth century. After B. Fritzbøger 1992.

Chapter 9

Forest legislation and crown wood administration

Legislation in general

Laws reflect the intentions of legislators. In this way they could be seen as mere mirages of ideal class interests far from reality. Yet by their tacit selections and sometimes displacement of accent, legal texts also echo the everyday realities of property assertion and cognition. So it would be naïve to perceive all juridical expressions as plain intents. As stated by Oliver Rackham, 'many technically illegal activities were treated as a source of revenue from fines rather than as crimes to be prevented'.[1]

Who actually formulated the laws and which interests they accordingly represented are evidently of great importance. In principle, the thirteenth century provincial laws contrived by king, church and aristocracy continued to constitute the main sources of law until early absolutism. So they were among the first texts to be published in print by the beginning of the sixteenth century.[2]

During the fourteenth and fifteenth centuries they were supplemented by a variety of regional statutes and national laws that were of both a general and more specific nature. The latter were issued by the two complementary components of elective kingship: crown and council.

In general no clear demarcation existed between legislation and particular royal decisions.[3] The so-called 'open letters' issued by the king to the public in general as well as royal letters to individuals were also sources of law.[4] And from the introduction of absolute rule in 1660, the distinction was nonsensical. According to its constitutional basis, the *Lex Regia* of 1665, the king on this occasion acquired 'the highest power and authority to issue laws and ordinances following his own good intent and appreciation'.[5]

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1. O. Rackham 1980, p. 16.
2. A. Wittendorff 1989, p. 31.
3. S. Iuul 1954, p. 15.
4. Corpus Constituionem Daniæ I, p. VIII.
5. Chronologisk Register 1, p. 33: 'højeste Magt og Myndighed til at giøre Love og Forordninger efter sin egen gode Villie og Velbehag'.

Coronation charters since 1282 were of a constitutional character. Meant, as they were, to safeguard the propertied classes against undesirable state intervention and abuse, they include a couple of clauses concerning forest resources. From the coronation charter of Christian II (1513) to that of Frederik III (1648), all future kings had to declare that they would respect noble (and clerical) *enemærker*. In the wording of the first, 'neither we nor our bailiffs should let *enemærke* woods belonging to the church, monasteries or nobility be used for pannage, timber cutting or any other usage'(§9).[6]

Christian II issued some of the most notable legislation of the early sixteenth century. It dates from some time before December 1521 and expresses the king's revolutionary ideas. He reduced, for example, the legal autonomy of the church and encumbered the commercial liberty of the landed aristocracy. The laws were burned in an auto-da-fé organised by rebellious nobles in 1523, and were subsequently annulled.

Major post-reformation legislation took the form of so-called 'recesses', which until 1660 were issued at uneven intervals. Several hold clauses of a nature similar to those included in coronation charters, but here they are given a more general character. It is, however, remarkable that the last effort before 1660 to sum up all previous legislation, Christian IV's Great Recess of 1643, has no reference to forest management at all.[7]

Forest ownership and management were not regulated by provincial or national legislation only. In an outstanding case, a court ruling of 1484 regarding the forests of the hamlet Abbetved on Zealand expressly lays down rules for how to treat infringements of the defined woodlots.[8] In cases where one of the three tenants cut trees on the premises of one of the other farms, he should not only compensate for the loss but also pay a fine of no less than 1 pair of bullocks, 1 barrel of salt and 1 barrel of beer to the community. The verdict, however, mentions another solution. The tenants could choose to commit themselves to a voluntary arrangement, according to which they utilised the wood in common as 'good neighbours'. So, even if the aim of the allotment of woods was precisely to restrain commonage, it seems that local self-determination could easily nullify this effort.

The local legal institutions of medieval rural society are widely believed to resemble or even equal those conceived from written evidence of the seventeenth and eighteenth centuries: individual open field farming based upon comprehensive co-ordination regulated by the village council. Yet evidence of both property and

6. Samling af danske Kongers Haandfæstninger, p. 59: 'oc skulle wii ellir wore fogder ey lade bruge kirkins, clostirns ellir ridderskabs enmærke skowge anthen met oldeswin, tymmerhwg ellig nogit andit hwg ellir brwgelse'.
7. Corpus Constitutionem Daniæ 5, no. 143.
8. Repertorium Diplomaticum regni Danici II, no. 5449 (27.4.1484).

field structure makes such an interpretation troublesome.[9] Thirteenth century provincial laws appear to document the fact that by that date individual determination dominated village communities far more than two or three centuries later.

Still a great number of local bylaws throw some light on everyday regulation of early modern village communities. The oldest date from the early part of the sixteenth century.[10] The actual impact of those village courts that are described by the laws is, however, uncertain.[11] The major uncertainty regards the degree of peasant self-determination in contrast to seigneurial control. It was often the local minister who wrote down the by-laws, and they may consequently reflect a wide variety of interests.[12] Nevertheless, the evidence of especially eighteenth century bylaws confirms a considerable influence of seigneurial interests.[13]

Danish historians have been in some disagreement as to whether the village council acted as first instance *vis-à-vis* the district court or whether the impact of the former was in general negligible.[14] Yet during the seventeenth and eighteenth centuries a great number of cases were obviously closed without the interference of the latter. This might result from their treatment in the village courts – but it might as well reflect a widespread praxis of settlement without an actual court ruling.[15]

The fact that payment of village fines took the form of joint beer-drinking reveals that within the scope of local jurisdiction punishment had a function different from that of preventive deterrence. The re-establishment of pre-felony social relations was rather the essential interest of local rural society.[16] What we see is a ritual invalidation of the loss of honour so demeaning to customary rural society.[17]

No major differences are encountered when village by-laws from the last decades of village communalism are compared with earlier examples. One of the more notable things that should be mentioned is that in Refsvindinge (Funen) coppicing was presumed to take place in work teams of nine persons.[18] But each of the nine was to cut in his own woodlot. Apparently, the simultaneous coppicing served only as a means to mutually supervise their takings. In general, a substantial part of the articles on forestry matters found in bylaws concerns the underwood (see pp. 187 f).

9. P. Meyer 1991.
10. A number of these are printed in Danske Vider og Vedtægter 1-5.
11. H. Schummel 1990.
12. H. H. Appel 1999, pp. 253 f.
13. B. Løgstrup 1986, pp. 38 f.
14. H. H. Appel 1999, p. 252.
15. J. C. Vesterskov Johansen 1987.
16. H. H. Appel 1999, pp. 245 f.
17. H. Neveux & E. Österberg 1997, pp. 167 ff.
18. Danske Vider og Vedtægter 1, p. 480.

Danske lov and the Forest Ordinances

When regarding the management of natural resources, the major innovation of absolutist legislation as compared with that of the pre-1660 era, was the issue of a number of particular forest laws. Until 1750 six such ordinances emerged, all largely repeating and emphasising the foregoing one.[19] Besides these, a number of royal resolutions appeared concerning more restricted matters related to forestry. But in general early absolutist forest legislation has rightly been characterised as a 'confusion of universal provisions to protect the forest and specific instructions regarding royal forest management'.[20] The latter proves to make up the major part of all ordinances, so the clauses dealing with woodland ownership in general are relatively few.

The first absolutist forest ordinance was issued in 1665 but for some reason never printed.[21] Consequently it was neither included in the edition of forest laws published by L. S. Fallesen in 1836 nor analysed by A. Oppermann in his classical treatment of Danish forest legislation (1929).[22]

It basically includes the same key elements as an instruction issued to the royal *overforstmester* on Zealand, Morten Scavenius, two years before.[23] In its preamble, it expresses the general forestry interests of a seventeenth century absolutist state: 'Since we have graciously become acquainted with the fact that numerous disorders take place in the management of our forests every day, whereby the forests not only are abused and reduced by cutting, singeing of potash and other improper treatment, the hunt is wasted and the annual benefit that could be achieved from the woods for cattle feeding and the prosperity of the country is more and more reduced, the which to prevent, we have graciously seen fit to let this our well-intentioned ordinance be published for the information of everyone'.[24]

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19. E. g. E. Holm 1885, p. 181.
20. A. H. Grøn 1938, p. 37: 'Sammenblandinger af alment gyldige Skovværnsbestemmelser og Specielle Forskrifter vedrørende Driften af de kgl. Skove'.
21. Rigsarkivet, Rentekammeret 212.9, no. 2281 (8.11.1665) and copied in a collection of legal texts regarding forestry produced by the royal forest service in the nineteenth century (Rentekammeret 331.1, pp. 18-25).
22. See, however, A. F. Bergsøe 1842, p. 5; A. H. Grøn 1955, p. 53; it is mentioned briefly by A. Oppermann 1929, p. 56, n. 2.
23. Rentekammeret 212.7, no. 960. (24.11.1663).
24. Rentekammeret 212.9, no. 2281, p. 18: 'efftersom Vi Naad: kommer i erfahring, om adtschillige Disordres, som udj Vorris Schoufues administration dageligen foregaar, huorved Schoufuene iche alleneste med Schouffhug, Potasche at brend och anden V tilbörlig medfart forhades och forminsches, mens end och Jagten derudoffuer forödes och dend Aarlig Nytte, som til Quegets föede og Landets frembtarff aff Schauffuen kunde haffvis, Jo meere och meere forminsches, Da Omb saadant betimeligen at forrekomme, haffuer Vi Naad: for got anseet, denne Vorris velmeendte anordning en huer till effterretning at lade publicere'.

In 1670 the newly acceded Christian V issued a substantial ordinance with 54 paragraphs. In advance, the head of the royal forest service, *overjægermester* Vincents Joachim Hahn, had presented the individual clauses in detail in a state commission.[25] Yet, even though he was the only member with evident silvicultural expertise, not all his suggestions were followed. The introduction of regular linear clear-cuts was, for instance, entirely rejected.[26]

For the subsequent half century the ordinance of 1670 remained the foundation of forest legislation. Even if a number of improvements and modifications did occur in the ordinances of 1680, 1687 and 1710, they mostly concerned the management of royal forests; e.g. the notably inconstant silvicultural strategies. Furthermore, a number of minor resolutions issued during this period regulated various aspects of forest ownership. When regarding private forestry, early absolute legislation largely dealt with topics comparable to those included in the recesses of the sixteenth century.

It remained to the young absolutist state to realise an old aspiration to assemble all existing legislation in one single statute-book.[27] The work commenced in 1661, but it was not concluded until twenty-two years later. According to its preamble, *Danske Lov* was issued since 'the subjects who had one God, one faith and one king in a realm were, as it were, segregated by distinct law books'.[28] 'Uniformity' was the key principle of absolute rule: the legislation on guilds and crafts was renewed in 1681-82; in 1681-88 a novel, consistent land register was made as a basis of all subsequent taxation on land; in 1685 the Lutheran church ritual was reformed etc.

As an all-inclusive law book, *Danske Lov* of 1683 was extensive – in pages and in scope – the critical Robert Molesworth even considered it to outdo the entire world as regards justice, brevity and perspicuity.[29] In general, its paragraphs on forest ownership are just repetitions of former recesses and the ordinances of 1665-80. Still, here they appear in a broad legislative context that enables a better comprehension of both their impact on reality and their ideological background. It becomes obvious, for example, that the notion of dissuasion was fundamental to the penal clauses of the law.[30]

The 1710 ordinance instituted a particular forest tribunal (*Skov- og jagtsession*) to deal solely with forest theft and poaching on crown lands.[31] The verdicts of the tribunal could not be appealed. According to a royal resolution from 1711 they should

25. Rigsarkivet, Danske Kancelli C 6, 664/1670.
26. B. Fritzbøger 1989c, pp. 6 ff.
27. S. Iuul 1954.
28. Danske Lov, preamble: 'Tilmed vare Undersaatterne som hafde een Gud / een Tro / een Konge i et Rige / ligesom adskilte ved sær Lovbøger'.
29. R. Molesworth 1694, p. 213.
30. B. Scocozza 1989, p. 317.
31. Dansk skovbrug 1710-33, p. 17.

Table 2: *The content of the Forest Ordinance 1733.*

§1	On forest supervision and punishment for forest theft
§2	On the pruning of young oak trees
§3	On the fencing of areas with re-growth
§4	On the appointment of such areas
§5	On supervision with silvicultural measures
§6	On the settlement and employment of forest rangers
§7	On thinning
§8	On felling
§9	On the girdling of swine
§10	On time limits for the allowance procedure
§11	On the employment of the hammer used by allowances
§12	On the allowance of treetops
§13	On the allowance of windfalls
§14	On the allowance procedure
§15	On which trees to cut
§16	On assessment of the trees to be cut
§17	On exceeding the time limits
§18	On allowance of wattle
§19	On the allowance of hoop sticks
§20	On the use of earth and stone walls and retrenchment of wattle
§21	On the maintenance of wattle fences
§22	On the supervision of the *vildtbane*-boundaries
§23	On the maintenance of *vildtbane*-stakes
§24	On reports about forest theft

be carried out instantaneously.[32] The tribunal had two sections, one in Zealand and one in Jutland. They both consisted of *jægermestre* (senior hunting officials) and *overførstere* (senior forest officials), royal *ridefogeder* or *amtsskrivere* (stewards) and county governors (*amtmænd*). And each year, until they were closed down in 1788, they handled a forbidding number of cases.

As it was the intention of the system by which tenants held a right to receive fire wood and timber as allowance from the overwood (see pp. 198 ff) partly to reduce overwood consumption and partly to assure the rural supplies with energy and materials, resale of overwood received in this manner was obviously illegal. By 1718 a specific decree was even issued on the matter.[33]

The Forest Ordinance of 1733 (table 2) was an integrated part of the government's mercantilist emergency legislation. Its primary objective was to reduce and control wood consumption and to promote silviculture. As regards woodland prop-

32. C. Weismann 1931, p. 267.

33. Chronologisk Samling, pp. 124-26.

Table 2: *Continued.*

§25	On the abolition of employment of young oak trees as timber
§26	On the keeping of goats
§27	On the distribution and employment of the income
§28	On prohibition against selling *pro officio* allowances
§29	On charcoal-burning
§30	On the registration of all charcoal stacks
§31	On searching for stolen wood
§32	On trespassing and forest theft
§33	On the general validity of the ordinance in all kinds of crown woods
§34	On free cutting in freehold woods
§35	On the woods owned by church and state institutions
§36	On the employment of woods possessed *pro officio*
§37	On the employment of woods owned by juveniles
§38	On restrictions in the licence to sell wood
§39	On the woods sold by the crown with right of repurchase
§40	On pannage and revenue from *oldengæld*
§41	On pannage in *fællesskov*
§42	On peat digging
§43	On restrictions in the covering of peat by wickers in peasant wagons
§44	On the duties of the *overjægermester*
§45	On the duties of minor forest officials
§46	On the distribution of incoming fines
§47	On the use of written evidence in the Forest Tribunal

erty, it presupposed the dissolution of overwood commonage, even though this process was clearly not totally completed.

During the preparation of the ordinance, royal forest officials from all over the country were called upon to report on the observance of the preceding ordinance of 1710.[34] And from their accounts it was clear that the struggle against forest theft seemed impossible. From Tryggevælde County the *overjægermester* was, for example, notified that considering the low level of allowances 'it will be completely impossible to avoid forest theft. Firstly because the peasant needs fuel for brewing, baking, boiling and heating and timber to maintain his farm; likewise he must have timber for the maintenance of his cart and plough, which he cannot do without'.[35]

34. Dansk skovbrug 1710-33, pp. 81-263.

35. Dansk skovbrug 1710-33, p. 163: 'Det er ellers effter Vores Tanker U-mueligt gandske at forhindre utilladelig Skov-Hug. 1. Fordi Bunden til at brögge, bage, Kaage og til Varme maa have brende, samt at holde sin Gaard i Stand. item til Sin Vogn og Ploug u-omgiengeligen maa have Tömmer og ded ikke undvære kand'.

In general, only minor corrections were made in relation to the 1710 ordinance. Firstly, it was observed in conjunction with the remarks from Tryggevælde that the employment of fines and corporal corrections for forest theft had reached such a level that it injured the peasant (and consequently state) economy. The Forest Tribunal was therefore permitted to abate the punishments mentioned by the ordinances.

Secondly, it took up the question of resource preservation with regard to oak timber and peat. Thirdly, it altered and extended the demands for silviculture. Following a series of ineffective experiments with sowing and planting of forest trees during the 1720's, renewed emphasis was put on conservation of spontaneous regrowth. Finally, social intercourse between royal forest rangers and the rural public was restricted in order to augment the effectiveness of forest supervision. So gambling parties arranged by officials were strictly forbidden.

The forest property rules found in early modern legislation can be grouped in a number of themes: indefinite or more specific interdictions to overcut woods (in some cases even temporal conservation), silvicultural measures aiming at forest sustenance, basic regulation of common wood management and injunctions to allot common overwoods, subsequent ban of cutting in woodlots pertaining to others, various rules regarding allowance of wood to tenants, towns etc, regulation of pannage and pasture and finally a broad range of restrictions concerning wood production and trade.

Clearly, Danish forest legislation did not evolve in a void. In some respects, the legislation of Sweden, the neighbouring Nordic kingdom, was premature.[36] Still, considering its extensive northern wastelands, its metallurgic industries and its comparatively limited population, other political considerations were concerned than in Denmark.[37]

Some authors have suggested an impulse from Colbert's *Grande Ordonnance* of 1669.[38] Danish legislation was, however, most manifestly innovative in the field of use rights: firstly it regulated forest pasture and secondly it nullified all existing fuel wood permits.[39] In fact, no other relationship than contemporaneousness can be established. Influence from the forest legislation of Saxony through personal contacts seems more likely.[40]

36. H. L. Rydin 1855.
37. B. Fritzbøger 1999A.
38. C. M. Møller 1930, p. 26.
39. M. Devèze 1962, pp. 220 ff.
40. A. Oppermann 1929, pp. 59 ff.

Royal forest conservation and propagation

Attempts to regulate production and (even more so) consumption of natural resources were the most fundamental kind of state intervention in the property rights of early modern society. Forest legislation and management chiefly affected the theoretical right to consume and destroy (*ius utendi et abutendi*). So prohibitions against over-cutting appear in the numerous letters of appointment addressed to future royal county governors from as early as the fifteenth century.[41] When Jesper Brochmand was appointed governor over Gundsøgård County in 1542, for instance, he was instructed to maintain the estate, not to overcut the woods and not to sell off tenant sons.[42] Similar clauses were included in mortgage deeds.[43] In 1619 a royal letter instructed all county governors to check that freeholders who held soldiers in quarters did not overcut their woods.[44] In cases of obvious abuse, specific prohibitions against over cutting were issued, as happened when the town Nyborg received a royal letter on the matter in 1581.[45]

Closely related to negatively framed injunctions were declarations of conservation issued in particular cases of imminent maltreatment. One such declaration, apparently without effect, was issued for the woodlot Hestehaven in Nyborg just nine years before the above-mentioned letter.[46] Another, concerning two minute groves – Bygmandsris and Skaberkrat – near Viborg, was issued in 1573. Here we are told that the inhabitants of Viborg 'had let prune and preserve two groves named Bygmandsris and Skaberkrat and this has already grown so that it could be expected that – in time – it will turn into a wood from which mast and other things can be procured [...] and so that the aforementioned Bygmandsris and Skaberkrat will be preserved and kept in good order, we prohibit anybody whom-so-ever, especially our bailiffs, officials, citizens, peasants and everyone else, from cutting or allowing to be cut anything in any of these two copses without it being requisitioned to them by the chapter of Viborg Cathedral and the burgomasters and councillors of that town'.[47]

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41. W. Christensen 1903, p. 231.
42. Danske Kancelliregistranter 1535-50, p. 258.
43. E.g. Kong Frederik Is danske Registranter p. 7 (1.6.1523).
44. Corpus Constitutionem Daniae 3, no. 513 (10.1.1619).
45. Corpus Constitutionem Daniae 2, no. 233 (11.3.1581).
46. Corpus Constitutionem Daniae 1, no. 604 (1.4.1572).
47. Corpus Constitutionem Daniae 1, no. 644 (21.5.1573): 'skulle hafve ladet impe och upfredt tvende kratte ved nafn Bygmandsris och Skabberkrat, och det allerede er kommit til vext, saa at der end er forhaabning til, at det med tiden kunde blifve til skouf, saa mand kunde hafve der hielp af til olden och anden del [...] da paa det forskrefne Bygmandsris och Skabberkrat maa herefter fredis och ved god magt holdis, forbiude vi alle, ehvo de helst ere eller vere kunde, serdelis vore fogitter, embitsmend, borgere, bønder och alle andre, nogit efter denne dag at hugge eller lade i forskrefne tvende kratte, uden det blifver dennom forløfvit och forvist af capittel i Viborg domkirke och borgemesterne och raadmend der udi byen'.

Maybe such letters of conservation should be conceived not only as expressions of a wish to propagate the forest. In a subtle way they also accentuate the identity of the forest owner. Hence, to disallow others from cutting in a specific wood appears to have been widely employed as a manner in which to verbalise one's property claim.

A more general and remarkable attempt at forest conservation was launched in 1584 when the crown decreed that its tenants in the eastern parts of Koldinghus County should fence their woods against grazing cattle until after haymaking. Explicitly, this should be done not only to protect meadows in the woods but also in order to 'conserve the forests so that no man's livestock should be there before the hay was mowed and reaped […] in order to avoid the annual and common damage to the wood'.[48]

As in this example, most legal measures aiming at woodland sustainability were merely protective. The basic means available were restriction and parsimony. Yet only five years before the advent of absolutism, king and council issued a truly silvicultural ordinance.[59] It was valid only for Funen and Lolland but did concern tenants of the nobility as well as of the crown.

As with all early modern forest legislation, its pronounced rationale was a foreseeable regional deficiency in fuel wood and building timber.[50] In order to avoid this, it was decreed that 'everyone who gets permission to cut an oak or beech tree on crown lands as well as on noble estates is required to plant three in its place and to conserve and protect them either with a fence or in other ways as long as necessary for them to grow unharmed from the cattle'.[51] By its general validity in all kinds of landed property, the ordinance formed a minor revolution within forest legislation. Nevertheless, it proves impossible to estimate its effect.

Most fundamental to early absolutist forest legislation was the general responsibility of all forest owners to preserve their woods by regeneration measures.[52] Ten years later, the regional obligation of 1655 was made nationwide – but only on crown lands.[53] Six trees were to be planted for each one cut. The 1670 ordinance, on the other hand, did not go beyond a declaration in indefinite terms that all propri-

48. Corpus Constitutionem Daniae 2, no. 371 (9.9.1584): 'frede skoufvene, saa ingen mands fe eller kveg skulle gaa der udi før allis gres vor slagen och indført […]dermed saadanne aarlige och almindelige skoufskade kunde afskaffis'.
49. Corpus Constitutionem Daniae 6, no. 205 (10.11.1655).
50. J. Radkau 1983, pp. 515 f.
51. Corpus Constitutionem Daniae 6, no. 205 (10.11.1655): 'alle och enhver, som nogen træ af eig eller bøei tillades at hugge paa cronens saavelsom adelens, skal pligtig vere trei igien at sette och saa lenge enten med gierde eller i andre maader at frede och forvare, at det for kveg uskad kand frembvoxe'.
52. B. Fritzbøger 1989B.
53. Rentekammeret 212.9, no. 2281 (p. 587).

etors of wood should 'propagate and raise their woods and woodlots with over- and underwood'.[54]

Naturally, the interpretation of terms like 'propagate' and 'raise' is rather open. In his remarks on the paragraph, the royal *overjægermester*, Vincents Joachim Hahn, noted that 'the king and the common good appears to be better served with the sustenance of forests rather than with payment for their over-consumption and over-cutting. The peasant does not lose one blade of grass for the sake of forest planting, for he keeps the grass fenced in to sell or to provide his livestock with as hay in the winter or to feed on in the summer'.[55] So originally the re-planting clauses applicable for crown lands were intended to apply to all kinds of woodland property. Accordingly, an almost contemporaneous legislative project by the jurist, Rasmus Vinding, enhances the 1655 statute so that all who received allowances of wood were bound to propagate as many young trees as their landlords demanded.[56]

The 1680 ordinance has little to say about the management of non-royal woods, but a statute of 29 December 1681 simply resolved that to benefit 'the common good' all private and institutional owners of woodland should not only deal economically with it but should also comply with those silvicultural standards that applied to the crown woods.[57] This, naturally, meant that no further deforestation was allowed. If the prohibition was violated, the wood in question – or rather, what remained of it – was forfeited to the crown. It has been questioned if the statute also regarded entailed estates,[58] but nothing indicates that it did not.

The silvicultural schemes in principle to be followed by all landlords were inconstant.[59] As mentioned, the command to re-plant trees was modified from six to an unspecified number in 1670 (and 1680). But in the ordinance of 1687, the number six returns. The following ordinance, however, notably changed the course of royal silviculture. Instead of planting, the sowing of tree seed was now decreed, while areas with abundant re-growth should be fenced against browsing cattle and game. Finally, all ordinances – albeit with declining accent from 1670 to 1710 – commanded the crown tenants to prune a number of young trees every year.

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54. §1, Chronologisk Samling, p. 4: 'dyrke og opelske deres Skove og Skovsparter med Under- og Overskov'.
55. Rigsarkivet, Rentekammeret 3321.99: 'Kongen och det almindelige beste siunids 1) bedre at were tient med Schouffuenes vedligeholdelse end med betalling for deris offuerbrug och forhuggelse, 2) bonden mister ey it græsstraae for Schouffuenes plantelses schyld, ti bunden beholder selff græsset udi indhegningen, huilchet er hannem udi höe saa tienlig om vinteren till at selge eller fore med som det kand were om sommeren till fædrifft'.
56. Forarbejderne til Kong Kristian V.s Danske Lov II, no. 53, p. 38.
57. Chronologisk Samling, pp. 31 f.
58. A. H. Grøn 1955, p. 60.
59. B. Fritzbøger 1990C.

In accordance with the statute of 1681, the 1687 (§3) and 1710 ordinances (§2) explicitly extended the obligation to re-plant to non-crown woods. And in 1696 a specific statute on silviculture further elaborated the subject.[60] Private owners were promised ten years of tax-exemption on areas where they planted forest. To assist them, the crown put an itinerant teacher at their disposal, but no results appear to have followed from the effort.[61]

In principle, then, this was the early absolutist silvicultural canon which was to be followed by private landlords, ministers, town councils and freehold peasants: planting, sowing, pruning and fencing. As *Danske Lov* not very accurately summarises (3-13-22): 'Whoever is granted to cut a tree (oak, beech or any other) in the woods of any master and who does not prune ten young trees as ordained or plant six trees of identical kind in its place and conserves and shelters them so that they can grow in peace from the livestock, shall be mulcted two weights [approximately 31 grams] of silver for each tree that has been neglected'.[62]

We know almost nothing as to whether private landlords actually obeyed the propagation clauses. Yet some individual landowners were renowned silviculturalists. Among them was archbishop Hans Svane, who received major landed possessions from the crown in appreciation for his participation in the *coup d'état* of 1660.[63] But in crown woods, considerable silvicultural efforts were made.[64] From the 1670's, trees were regularly pruned and spontaneous re-growth was fenced as protection against cattle and game. Meanwhile, unrelenting endeavours were made to plant and sow forest trees, mostly however with negative results.

Regulation of wood production and trade

A substantial bulk of early modern forest legislation, which aimed to promote sustainable supplies of firewood and timber, regulated specific aspects of production and trade. In the case of the extensive Norwegian timber exports, trade regulations partly dictated from Copenhagen were numerous.[65] The Danish wood market was only harnessed to meet moderate domestic demands, but here, too, mercantilist state control was nevertheless considerable.

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60. Chronologisk Samling, p. 87-89.
61. B. Fritzbøger 1989A.
62. 'Hvo som noget Træ / Æg / Bøg / eller andet / tilladis at hugge i nogen Herskabs Skove / og ikke tj unge Træer / hvor hannem udvisis beskærer / saa og sex Træer af samme Slags igien setter / og dennem freder og forvarer / at de for Qvæg Uskat kand fremvoxe / bøde til Husbonden to Lod Sølv for hvert Træ / der vorder forsømt'.
63. E. Oksbjerg 1989B, pp. 71 ff; F. Heide 1921, p. 68.
64. V. Petersen 1969; B. Fritzbøger 1989C; B. Fritzbøger 1990C.
65. Frygjordet 1992, *passim.*

The Recesses of Copenhagen (1557) and Kolding (1558) included a general ban on wood exports.[66] And this prohibition was stressed on numerous occasions.[67] Still it appears not unconditionally to have included the most heavily wooded parts of the kingdom. In Blekinge the peasants were free to export timber of alder and birch for which they were to defray an export duty.[68] But simultaneously the general ban was stressed in open letters addressed directly to that province.[69]

The peasants in Varberg County, Halland, appear to have held original rights to export timber that were repeated in 1574. In order to save the woods, the king stressed that 'none of our and the crown's tenants in that county shall after this day build vessels with a keel larger than 12 '*alen*' [7.5 metres] after old custom and neither shall they export bigger timber than has been done since time immemorial'.[70] In 1641 exporting manufactured timber from the neighbouring county of Laholm was explicitly banned.[71] From Gotland no timber exceeding the 12 *alen* limit was allowed to be sold to foreigners.[72]

Vital elements of the domestic trade, therefore, were also regulated by the state. As in Halland, restrictions in local ship-building in order to prevent wood shortage were common.[73] Similarly the freeholders of Koldinghus County were permitted only to barter fuel wood to the citizens of the local town of Kolding.[74] As part of the general attempt to ease commerce by the introduction of metrological uniformity,[75] the length of the logs constituting a fathom was established as 'one Zealand *alen*' or approximately 0.62 meters.[76] This in turn fixed the *favn* (fathom) as *c.* 2.3 cubic meters including intervening space.[77]

Not only trade but also various forms of wood consumption was regulated by state legislation. In 1554 the erection of full-timbered log-houses was universally

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66. Danske Recesser og Ordinantser, p. 250, §6; Corpus Constitutionem Daniae 1, no. 1 (13.12.1558), §64.
67. E.g. Corpus Constitutionem Daniae 1, no. 115 (5.6.1562), no. 221 (19.6.1564), no. 578 (2.7.1571), Corpus Constitutionem Daniae 2, no. 224 (18.12.1580), Corpus Constitutionem Daniae 4, no. 638 (30.9.1638), Kancelliets Brevbøger 22.5.1555, 19.1.1602, 24.5.1637, 3.7.1640, 28.1.1641.
68. Corpus Constitutionem Daniae 3, no. 175 (19.5.1602), no. 451 (3.5.1617).
69. Corpus Constitutionem Daniae 2, no. 36 (1576), Corpus Constitutionem Daniae 5, no. 89 (1.5.1641).
70. Corpus Constitutionem Daniae 1, no. 697 (1.4.1574): 'at ingen af vore och kronens bønder skulle efter denne dag bøgge støre skibe end paa 12 alne køel efter gammel sedvane och icke heller at skulle udføre større tømmer end, som af arrilds sked er'.
71. Corpus Constitutionem Daniae 5, no. 105 (28.10.1641).
72. Corpus Constitutionem Daniae 2, no. 408 (22.8.1585).
73. E.g. Corpus Constitutionem Daniae 1, no. 697 (1.4.1574).
74. Corpus Constitutionem Daniae 2, no. 545 (28.9.1590).
75. W. Kula 1984.
76. Corpus Constitutionem Daniae 5, no. 72 (18.10.1640).
77. B. Fritzbøger 1989B, pp. 241 f.

prohibited;[78] yet the ban not always obeyed.[79] And a quarter of a century later, an even more far-reaching ban against any establishment of cottages at farmsteads belonging to freeholders in Koldinghus County was issued.[80] Again, the objective was the conservation of timber trees.

In order to economise on the underwood, several legal attempts to curb the consumption of fence pickets and wattle were made. Both in Zealand and in parts of Funen, the county governors were repeatedly ordered to have the peasant ditch and build stonewalls instead.[81] And by 1695 a general statute was issued on the matter.[82]

A final example of legal intervention in woodland management and wood consumption appears to have been peculiar to the moor-dominated expanses of Central and Western Jutland. In 1652, Frederik III issued an open letter, according to which 'we experience that major abuses originating from aversion and negligence are taking place in Skanderborg County since a number of herdsmen and vagrants are said to take fire from the villages and carry it out in the fields where they ignite and burn the trees so that not only the moor but even entire woods are ruined'.[83] This 'old custom' was, not surprisingly, to terminate. Still it is not immediately comprehensible why people were burning down forest trees standing on their roots. Most likely it reflected the custom to burn down moorland in order to rejuvenate old heather bushes.[84]

With the intention of reducing the consumption of wood as well as for strategic reasons, the state continued to carry out detailed regulation of specific aspects of wood production and trade during the entire period. Numerous decrees on timber dimensions were issued, for instance. And the employment of export prohibitions continued during the absolutist era.[85] Nevertheless, it was of greater consequence for the domestic trade when the 1687 ordinance (§36) established that forest owners with a landed property of less than 200 *tønder hartkorn* were prohibited from selling wood. They were free, however, to utilise the wood for themselves and their tenants.

The market supply of domestic fuel wood was, then, in general restricted and meeting demands must have caused considerable difficulties. It was not only many

78. F. Dyrlund 1869-70; repeated in Corpus Constitutionem Daniae 2, no. 87 (24.12.1577).
79. Viborg Landstings Dombøger 1616-1618, 1617C no. 202.
80. Corpus Constitutionem Daniae 2, no. 156 (7.4.1579).
81. Kancelliets brevbøger 28.7.1562; Corpus Constitutionem Daniae 4, no. 84 (1.9.1623), Corpus Constitutionem Daniae 5, no. 352 (13.7.1648).
82. Chronologisk Samling, pp. 84 ff.
83. Corpus Constitutionem Daniae 6, no. 79 (9.6.1652): 'vi erfarer stor misbrug af mutvillighed och uachtsomhed udi Skanderborg len at skal begaais, i det en del hyrder och løst folk skal tage ild ud af byerne med sig och bære udi marken træerne dermed at ansticke och forbrende, hvorudofver icke allene hede, men endochsaa hele skofve skal forderfvis'.
84. O. Højrup 1970.
85. E.g. Chronologisk Samling, pp. 130 ff (24.5.1726).

towns that had to rely on the barter of timber. So did also the rural population of sparsely wooded areas. In 1683 we are informed of the two hamlets Viderup and Toggerbo in a barren part of eastern Jutland that 'for fuel or fencing they have no supply whatsoever, but they must buy it from other districts and places'.[86] Apparently, rural energy supplies were to some extent based upon imports from abroad.

86. Rigsarkivet, Christian Vs Matrikel, 1088: 'Til ildebrand eller rishug haver de ingen forråd i ringeste måde, men må købe det fra andre herreder eller steder'.

Chapter 10
Parcelling out wood commons

The last *almindinger* and the appropriation of land

The further development of the *almindinger* known from the high Middle Ages has caused some confusion among Danish historians. Kai Hørby, for example, suggests that larger royal forests in some parts of the kingdom continued to be commonly available against the payment of pannage.[1] Apparently this applied primarily to *almindinger* or more extensive *overdrev* such as Stensved (southern Zealand) and Jernved (Schleswig). However, this appears to lack support from the available sources.

The last expression of the royal protection of peasant admission to *almindinger* appears in Christian I's privileges concerning the province of Skåne from 1481 as well as his son's replication from 1502.[2] According to both the king 'wishes that they be allowed to cut where "our *alminding*" is – and elsewhere – as they have done from time immemorial'.[3] Once again the peasant licence reflected a royal claim.

From the general peasant's right to the wood in *almindinger* emerged the need to protect their physical access to use it. Christian I's privileges accordingly banned all kinds of impediment to free access on forest roads and by doing so reiterated similar clauses in the provincial laws.[4] The exact identity of the roads in question was announced in a subsequent charter, and they were all located in *almindinger* in Skåne.[5]

The historical mutability of the *alminding* concept is obvious. In 1484 a wood explicitly labelled *allmyndigh skow* in Abbetved (Zealand) covered parts of the infields of three farms as well as the outfields surrounding the village.[6] The employment of the wood was divided in such a way that one farm reserved for itself a part of the infield wood together with the entire outfield wood, whereas the two others

1. K. Hørby 1980A, p. 111.
2. A. Bøgh 1994, p. 96, note 34; W. Christensen 1903, p. 378.
3. Den danske rigslovgivning 1397-1513, no. 35 (9.3.1481): 'tha wele wii, at man ther hugge maa oc annerstedz, som wor almenning findes, som the afff areld giordt haffue'.
4. Danmarks Gamle Landskabslove 1, p. 43 (SkL 69) and 2, pp. 130 f (JL I.56).
5. Repertorium Diplomaticum regni Danici Mediaevalis II, no. 10003 (1503).
6. Repertorium Diplomaticum regni Danici Mediaevalis II, no. 5449 27.4.1484).

obtained only the part of the wood covering their respective fields and meadows. Actually, sixteenth century sources only mention *almindinger stricto sensu* in Skåne. So open-to-all *almindinger* of the High Middle Ages were obviously on the wane.

Apart from remarks about villages founded in the *alminding*, very little is known about the colonisation of Danish wastelands with this specific status.[7] Not until the gradual cessation of medieval expansionism do we hear of state intervention in this regard. By the beginning of the sixteenth century, interdictions were issued against settlement and cultivation in the *almindinger* of Ingelstad and Järrestad Districts in Skåne.[8]

Besides the rich indirect evidence available from place names, very little information about the process of forest clearing has been handed down, though in some cases parcelling out of insular arable fields from common lands is reflected in deeds of various kinds. In a number of cases, the concept *'ryd'* is employed to classify a specific kind of landscape: a forest clearing.

In 1313 it appears in the designation *Esgistorps rythe*, i.e. the clearing belonging to Eskilstrup.[9] Fifty years later, a deed mentions a landed possession 'with all its adjoining lands, namely arable fields, meadows, pastures, woods, *ruth*, copses, common and site'.[10] Finally, a late fifteenth century document explicitly distinguishes between *rydh* and woodland.[11] Corresponding to this employment of *'ryd'* as landscape type, the term was widely applied as settlement name – especially in the thinly inhabited areas of north-eastern Zealand.[12]

The Land Register of the bishop of Roskilde *c.* 1370 mentions several named clearings with the ending *–rud*. But, more interestingly, it equals such *rud* with *ornum*, i.e. individual lots outside the regular distribution of village lands.[13] So, maybe the demarcation of a borderline between woodland and arable (see p. 82) was relevant precisely where wood commons were cleared and cultivated on an individual basis according to the provincial law articles regulating this kind of activity.[14]

In extremely rare instances, it is possible to follow non-settlement woodland clearings for a longer period of time. A fifteenth century document, for instance, treats a clearing named *Myøretwedh* that was located somewhere in the extensive

7. E. Porsmose 1981, p. 443.
8. W. Christensen 1903, s. 378; Det kongelige rettertings domme I p. 401.
9. Liber Donationum Monasterii Sorensem p. 516.
10. Diplomatarium Danicum 3:6:342 (8.6.1363): 'cum omnibus pertinenciis suis. uidelicet agris pratis pasquis silvis. ruth. riis fælygh forta'.
11. Repertorium Diplomaticum regni Danici Mediaevalis II, no. 3131 (1.9.1472).
12. Danmarks Stednavne 1, 1929.
13. Roskildebispens Jordebog, p. 10; cf. P. J. Jørgensen 1940, 183.
14. A. Hoff 1997, pp. 127 ff.

Fig. 16: *Brede and Smaae Myretue recorded on the 1805 enclosure map in the periphery of the village Særløse on Zealand. Kort- og Matrikelstyrelsen.*

woods surrounding the Zealand village Særløse.[15] Lying as it was in the common wood, the court considered that it belonged to the tenant of the Altar of St. Catherine and not to the vicarage. An identical field name (*Myre Twedtz Skouskiffter*) is, incidentally, documented in 1682 as well as on the enclosure map (*Brede* and *Smaae Myretue*) from 1805.[16] It appears, therefore, that a small clearing made during the late Middle Ages was sustained during the ensuing 330 years.

One of the major woodland complexes on Zealand likely to have served as *alminding* is Gribskov, today comprising some 5600 hectares. The prefix '*grib-*' suggests a reference to the concept *gribsjord* that appears in *Danske Lov* of 1683 (5-10-

15. Repertorium Diplomaticum regni Danici Mediaevalis II, no. 3923 (15.11.1476).
16. Christian V's Matrikel, MB 97.

10) though not, for example, in *Jyske Lov*.[17] The term is not easily appreciated, but according to a seventeenth century legal vocabulary it 'means as much as the land in the field which has not formerly been assessed as *bol* or been measured by rope, but it is particular land – either outfields or unfit for use – considered as unfit [...] to be valued in *bol* [...] and is called *gripsjord* because anybody *grips* for it without *bol*-rope, if he can get it'.[18]

Hence, *gribsjord* appears to be related to apprehension of wastelands for settlement or cultivation with very tangible instances of *primo occupatio*. But apparently it was not strictly attached to common lands. An enlightening fifteenth century note from the parish court of Malling (Jutland) states that because the village had never been deserted (during the Black Death), everybody knew the whereabouts and extent of their individual lots in fields, meadows and woods, and no land had been subjected to redistribution or usurpation (*gryb*).[19] So individually appropriated land, no matter what its previous status, appears to have been regarded as *gribsjord*.

Shared rights to *overdrev* and *fællesskov*

In the late medieval and early modern periods, *almindinger* appear only to have had significance east of the Sound. But well-defined communities made use of many – maybe even most – Danish woods of that period. They were either inter-village *overdrev* or intra-village *fællesskove*. In both types of commons, the joint utilisation was 'horizontal' since the wood had no internal physical borderlines. Instead, the share pertaining to each co-proprietor was determined as relative to the total wood (or its specific resources).

The actual distribution of use rights could be organised in a number of different ways. By the end of the fifteenth century, the proprietor Mattes Greve had to share the fattening of swine in Ungerskov (Funen) by 'levelling' (*jævned*) with the other owners.[20] In such cases, the determination of each participant's relative possession, however, depended on some kind of distribution key.

The least complicated was based upon simple arithmetical fractions. It was, for example, employed in Gamle Hegneth near Klovby (Zealand) where every third

17. E. Oksbjerg 2002, p. 94.
18. C. Osterssøn Veylle 1665, p. 342: 'betyder saa meget som den Jord i Marcken / som ey tilforne er lagt Boel eller gaait under Reeb / men er særdelis / enten Udjord / eller oc noget wtienligt / som ey værdig actis [...] at lignis udi Boel [...] oc kaldis Gribe Jord / aff Aarsag / at en hver griver deraff / uden Boels-Reeb / hvis hannem kand tilkomme'.
19. Repertorium Diplomaticum regni Danici Mediaevalis II, no. 1662 (13.11.1463).
20. Repertorium Diplomaticum regni Danici Mediaevalis II, no. 7756 (10.11.1494).

tree, by the end of the fourteenth century, belonged to the bishop of Roskilde.[21] The same kind of partitioning was used in connection with other natural resources. 'Every fourth tree in the forest' could, for example, correspond with 'every fourth strip in the field',[22] or 'every fourth feed' (i.e. quarter of the hay harvest).[23] Even the measure 'sixth straw' was used.[24] Such fractions are mentioned as late as during the 1580's.[25]

This simple means of division could hypothetically reflect an equalisation of farm holdings.[26] No evidence, however, suggests this to be the case. It would presuppose a preceding unsatisfactory distribution of which we know nothing. Rather it reflects – to paraphrase Albrecht Timm – elements of a transition from use rights towards property rights,[27] a more tangible definition of property.

In some cases, the actual type of forest possession remains obscure. This applies to a case from 1343, when a deed concerning a forest belonging to the village Gershøj (Zealand) uses *alminding* as synonymous with *delæskough*.[28] The prefix '*dele-*' has highly ambiguous implications. In modern Danish, it means both to 'share' and to 'divide'. So when two persons '*deler*' something, they either use it jointly or they – contrarily – split it up into two distinct parts. In older language, the verb further more implies conflicts or even court rulings.[29] Most likely it signifies here common *fællesskove*.

The ambiguity is equally evident in the provincial laws. In *Jyske Lov* (articles I.46, 49, 51, 52 and 55) *'deld'* appears to designate a 'part' of the arable whereas '*delæ iorth*' (in a variant manuscript of JL) and '*delæ mæn*' (JL I.50) relate to 'common land' and 'commoners' respectively.[30]

Woodland was not the only natural resource to be shared by village communities. When one imagines how the landscape of medieval and early modern Denmark formed a mixture of wetlands, arable, trees, heather, dry meadows, bogs and scrub,

21. Roskildebispens Jordebog 1370, p. 39: 'Item silua que dicitur Gamle Hegneth. in qua quelibet tercia arbor est episcopi'.
22. De ældste danske Archivregistraturer II, p. 118 (1381); for an example of every eighth strip and every sixth tree, see Repertorium Diplomaticum regni Danici Mediaevalis II, no. 4653 (18.7.1480).
23. De ældste danske Archivregistraturer V, p. 969 (1465).
24. Repertorium Diplomaticum regni Danici Mediaevalis II, no. 8826 (20.6.1499) and 9001 (1499).
25. Kronens Skøder 1, p. 255 (1582).
26. E. Porsmose 1981, pp. 146 ff.
27. A. Timm 1960, p. 20.
28. Diplomatarium Danicum 3:1:152 (10.3.1341).
29. O. Kalkar 1, 1881, pp. 346 f; N. Å. Nielsen 1966, p. 64.
30. P. Meyer 1991, p. 155; A. Hoff 1997, p. 205; c.f. also E. Oksbjerg 2002, pp. 85 ff.

it is hardly surprising that 'marginal' elements were included in the evaluation of the arable – or at least that they were measured by the same standards.

As an inherent feature of the so-called 'open field system' various methods were employed to distribute the total village acreage. And, since parts of this acreage in many instances consisted of woodland, several late medieval woods were appraised and subdivided together with it. But even in cases where a physical division of the wood did not follow, general land standards were employed.

The most prominent distribution key was the *bol* – Latin *mansus*, roughly equivalent with English 'hide' – and its subdivisions (*otting* (1/8)[31], *sjetting* (1/6)[32], *fjerding* (1/4)).[33] According to the most feasible interpretation, the *bol* was a relative measure expressing a farm's fraction of the total village lands: 'an invariable fraction of the land pertaining to a certain village which, however, varied from one village to another'.[34] If within a certain village all *bol* were of equal size whereas *bol* from different villages were incompatible, attempts to deduce an absolute dimension of medieval *bol* become impracticable.[35] A late fifteenth century manuscript pretending to produce a conversion table between *bol* fractions, land assessments in *marks* and the number of physical field strips has rightly been described as 'enigmatic from one end to the other'.[36]

The definition of the *bol* has repeatedly generated debate among Danish historians. After decades of scientific dispute, Kai Hørby in 1980 concluded that 'we must, therefore, recognise that thus far we have been denied an understanding as to what acreage or which value exactly designates a *bol*'.[37] Though this statement appears no less apposite today, Jørgensen's generally acknowledged interpretation has been questioned. Simultaneously with Hørby's defeatist judgement, C. A. Christensen contended that apart from being a late (and post-) medieval land measure, *bol* signified the actual farms of the Viking Age with no reference to any land evaluation.[38] One of his leading arguments was that many known *bol* were named individually – a fact that makes no sense if the concept served only as an abstract gauge.

Among the named *bol* we find several woods, such as *Brotzbool* in Hinge (Jutland) that in 1455 consisted of both woodland and arable.[39] Arguing against Christensen's

31. E.g. Repertorium Diplomaticum regni Danici Mediaevalis II, no. 4335 (1478).
32. E.g. Diplomatarium Danicum 3:1:340 (23.7.1343).
33. E.g. Repertorium Diplomaticum regni Danici Mediaevalis II, no. 2525 (1468).
34. P. J. Jørgensen 1940, p. 180: 'en fra by til by vekslende, men i samme by konstant brøkdel af den jord, der til enhver tid hørte til byen'.
35. G. Lerche 1991, p. 166.
36. K. Erslev 1898, p. 47: 'gaadefuld fra Ende til anden'.
37. K. Hørby 1980B, p. 96: 'Vi må således erkende, at det foreløbig ikke er forundt os at vide, hvilket arealmål eller hvilken arealværdi der nøjagtigt skal forstås ved et bol'.
38. C. A. Christensen 1983.
39. Repertorium Diplomaticum regni Danici Mediaevalis II, no. 493. (5.6.1455).

attempt to reform the interpretation of the medieval *bol*, Ulsig and Kjær Sørensen rhetorically asked why, if that were the case, the *bol* within the same village were of equal size,[40] since this fact becomes implausible when no aspects of assessment of taxation are involved in the definition.

According to the most widespread opinion formulated by Poul Meyer, amongst others, *bol* fractions were the result of land division originating from inheritance and exchange.[41] Lately, Gurli Thuneby has, however, suggested that the unit was employed as a relative land measure during a late medieval process of settlement amalgamation reflecting the general population decrease.[42] This, however, renders the existence of several pre-1350 *bol* and fractions thereof difficult to comprehend.[43]

So parts of King Valdemar's Land Register from *c.* 1255 mentions a wood in Falster (Vålse) valued in *bol*.[44] It has been suggested that the evaluation regarded (unknown) settlements in the forest rather than the wood itself.[45] This, however, seems doubtful, and according to the same register, Skovhuse in Slagelse District on Zealand had 'as much in the forest as equates to one *bol*'.[46] Here we have an unquestionable example of woodland assessed by the inscrutable gauge.

As a provisional conclusion, it is positively established that the *bol* was employed as a relative land measure in connection with intra-village distribution of arable, meadows and woods. By the engagement of the unit, it was naturally conferred on specific pieces of land so that the named *bol* might reflect a gradual development from an appellative form to a proper name. The early or pre-medieval origin of the concept, however, remains uncertain.

The application of the *bol* measure was based upon the idea that every farm's proportion of wood should correspond to its proportion of arable (and all other natural resources of the village).[47] This becomes evident in an example from 1496, when a tenant in Vinding belonging to Øm Abbey had $2^1/_2$ *otting* in Vinding Skov 'as the farm has *otting* land in the fields'.[48]

The same was the case when quotas in the extensive forests surrounding the Hal-

40. E. Ulsig & A. Kjær Sørensen 1985.
41. P. Meyer 1949, pp. 257 f.
42. G. Thuneby 2000.
43. E.g. in the Land Register of the Chaptre of Århus *c.* 1313 (Århus Domkapitels Jordebøger 3).
44. Kong Valdemars Jordebog p. 129 v: 'Rex habet • iij • bool singulariter in silva'.
45. S. Gissel 1989, p. 124.
46. Kong Valdemars Jordebog p. 23 v: 'Jn Scoghusas • tantum in silua quantum pertinet ad unum mansum'.
47. P. Holm 1988, p. 92.
48. De ældste danske Archivregistraturer I, p. 211: 'eptersom samme gaard haffuer ottingh jord i marcken'.

land village of Tvååker were fixed according to the arable.[49] When the land value measure *mark* was applied to woodland in the thirteenth century, the crown's land included '8 *solidus* land in fields, meadows and wood'.[50] The land unit *'marsel'* was also applied to woods.[51]

In a great many instances, then, the woodland possession of farms or manors was determined in terms of fractions instead of as spatially fixed lots. In others (especially where a valuation into *bol* had taken place), it proves impossible to establish whether the property right in question was related to tangible wood parcels or not. That is also the case when a holding in Holsted in southern Zealand is reported to have 'half of the wood',[52] or when the manor Skarsholm (Zealand) in 1369 was sold including 'the part of the forest that from time immemorial has belonged to it'.[53]

Even if the number and identity of the participants was well defined, collective employment of natural resources such as that relating to both *overdrev* and *fællesskove* was generally considered socially destabilising by the legislators. This was, however, not always the case. In 1483, a court testimony vouched for the facts that Levring and Hindbjerg Skov (Jutland) had always been used in common and that 'nobody had ever been treated unfairly'.[54]

The participants could also choose to impose certain mutual restrictions on themselves. In 1480 four owners, for example, agreed that they should keep the two woods Hovedskov and Østerris in Zealand as common but that neither beech nor oak should be cut without the consent of the others.[55] In cases such as this, a joint council consisting of all participants must be presupposed as regulators of land use.

The concept *overdrev* primarily belongs to the early modern period, but during the fifteenth century one such *overdrev* comprising the forests surrounding the above-mentioned hamlet of Særløse was described using the terms *oredreff* and *alminding* synonymously.[57] As other examples of medieval *overdrev*, *old* or *ore*, all of which are synonymous, one could mention *Hemedal Ore* near Sorø and the so-called *Olden*-area in Hornsherred.[58] As observed by Erik Oksbjerg, medieval usage was, however, vague.[59] In several cases, the term simply meant 'pasture'.

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49. Diplomatarium Danicum 1:3:223 (1197).
50. Kong Valdemars Jordebog p. 37 v: '• viii° • solidos terre in agris, pratis et siluis ...'. A *solidus* (or *ørtug*) was 1/24 mark; cf. idem p. 23 r: 'Jn Totæthorp • i • oram et • vii • sol. Jn silua tantum'.
51. Repertorium Diplomaticum regni Danici Mediaevalis II, no. 6528 (28.6.1489), no. 8134 (1.5.1496).
52. Diplomatarium Danicum 1:3:183 (12.4.1192-1225).
53. Diplomatarium Danicum 3:8:338 (7.8.1369): 'cum parte silue ab antiquo sibi adiacente'.
54. De ældste danske Archivregistraturer II, p. 18: 'oc aldrig nogen waar fordelt der fore'.
55. Repertorium Diplomaticum regni Danici Mediaevalis II, no. 4741 (1480).
56. Rigsarkivet, Rentekammeret 431.12-16.
57. Repertorium Diplomaticum regni Danici Mediaevalis II, no. 3923.(15.11.1476).
58. B. Fritzbøger & J. Emborg 1996; Hornsherredundersøgelsen.
59. E. Oksbjerg 2002, pp. 116 f.

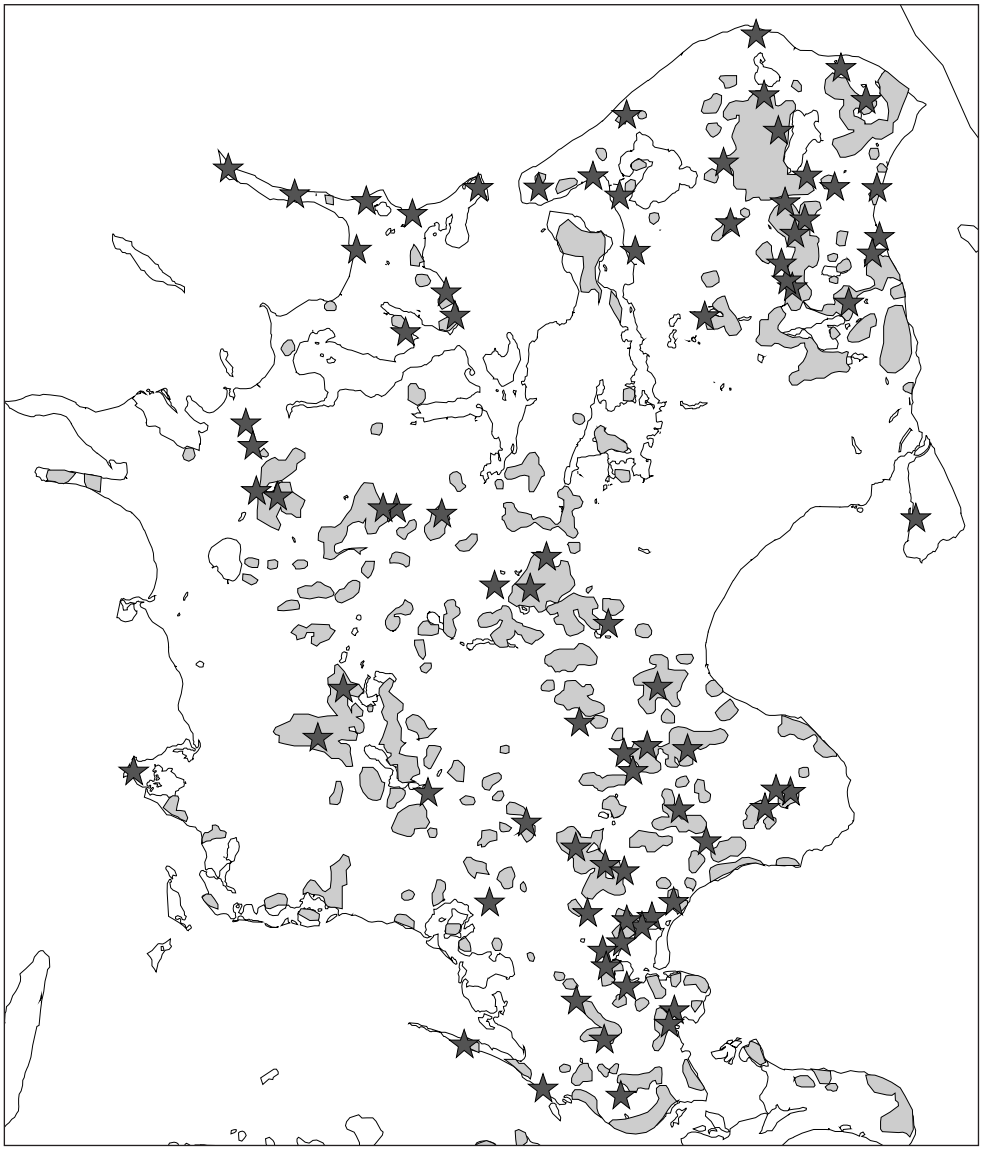

Fig. 17: *The rough position of* overdrev *in Zealand (starts) as they were recorded c. 1760*[56] *together with woodland signatures from printed maps (1:120,000) issued by the Royal Danish Academy of Sciences and Letters 1763-70 and based upon manuscript survey maps (1:20,000). Woodland and coastlines were clearly the two most significant localizing factors determining the distribution of* overdrev.

Notwithstanding the lucid demands to allot common overwood formulated by sixteenth century legislation, the concept *fællesskov* continues to appear in the written sources of that century. Furthermore, the Land Register of Christian V, which was produced during the 1680's, includes numerous woodland assessments

and descriptions. Yet most of this information is generally too vaguely formulated to establish positively if a wood was, in fact, partitioned into individual lots or if it was only utilised as *fællesskov*, the distribution of which rested upon some sort of distribution key.[60] So in general only sparse and ambiguous evidence about early modern *fælleskove* exists. In numerous instances where ministers and deans have 'part in all common woods according to their adjoining lands', it is hard to establish whether they did in fact possess wood parcels or if they merely took part in the common utilisation of the wood.[61]

Several documents, however, apply the term *fællesskov* unmistakably. The Land Register of the episcopal see in Roskilde dating from 1568 does so in a number of cases. The village Brorfelde, we are told, 'has some *fællesskov*'.[62] And Ørslev appears to have both parcelled wood and *fællesskov* since it 'has two small woodlots of oak and beech and *fællesskov*'.[63] Starupgård had one *enemærke* worth 100 swine's pannage and twenty-two woodlots worth 200.[64] In 1591 Nyrup Fællesskov was still partitioned in the ancient way so that Lystrup Estate held two-thirds of all trees and Egede the rest.[65]

Seventeenth century evidence also indicates the continued existence of *fællesskov*. In 1603 Skørringe and Flintinge Skove on Lolland were still described as 'common, un-divided and un-roped'.[66] In 1626 when Eske Brock's estate was divided among his heirs, 'some parts in the woods of Viffertsholm were still not allotted and consequently no pannage assessment is known'.[67] And as late as 1680 it is said of the tiny Lyngsbæk Krat that 'half belongs to the crown and is in common with count Rantzau and Frandz Rohde and is un-roped'.[68]

It is often difficult from the wording of ancient evidence to determine whether specific woodland rights were geographically fixed or not. This especially applies to conceptualisations of rights that appear to have been obsolete when they were

60. O. Widding 1948, p. 122.
61. Lolland-Falsterske herredsbøger 2, p. 6 (and *passim*): 'Lod y alle alminde skouffue effther sinn jordefangh'.
62. Roskilde Kapitels Jordebog, p. 47: 'Er nogen felgis Skouff tiill'.
63. Roskilde Kapitels Jordebog, p. 127: ' Er thoo smaa skouffslodder tiill, æg oc bøg oc fellis skouff'.
64. Rigsarkivet, Danske Kancelli B 94, 7.7.1578.
65. Kongens Rettertings Domme 1595-1604, pp. 198 ff. For a similar example, see Kronens Skøder I, p. 255 (26.6.1582).
66. Kongens Rettertings Domme 1595-1604, p. 488: 'fælles, uskiftede og urebede'.
67. Skiftet efter rigsråd Eske Brock 1626, p. 21 (no. 246a) : 'Her foruden nogle anparter wdi Weffersholmbs schouffue, som endnu er wschiffte, och der for icke kand wides, huor mange suinß oldenn dett ehr'; a similar reasoning is found on p. 64 (no. 723).
68. Rigsarkivet, Rentekammeret 333.15: Callöe Ambts Schouffue og Schoufs Parters Forteignelße (2.1.1681): 'Er Hanß Kongl: May^{tt} den halfue part, og i fellig med Gref Rantzou og Frandz Rohde og er V-rebbit'.

written down. In a sixteenth century register of church lands we are informed that 'in old times, Løjtofte church had "wagon-cut" in Købelev Wood'.[69] Other corresponding concepts are '*skovhug*'[70] (wood-cut) and '*øksehug*'[71](axe-cut). In some cases, the term 'lot' (*lod*) clearly just means part – i.e. a geographically non-specific fraction of the wood. So the village Grevelund Eske Brock in the 1620's had 'some lots in some non-divided forests [...] but how big the lot could be is unknown'.[72]

The same spatial indefiniteness is found in descriptions of two church holdings in Lolland 1616-17. The parish clerk in Fjelde had 'a free woodlot when woods are distributed either in Nørreskov or in Slemminge Skove', and his colleague in Vester Ulslev stated that 'when the wood is distributed in the winter, I receive as much fuel wood as the cottagers and nothing more'.[73] The challenging verb is 'distributing' or in Danish *bytte*. Its modern meaning is to exchange, but its semantic root is to 'give out' or '(re)-distribute'.[74] So it appears that some kind of temporary assignment of woodlots was possible. Something between fractional common property and physically defined lots.

Despite royal legislation, horizontal wood commons – both intra-village *fællesskov* and inter-village *overdrev* – did continue to exist during the sixteenth and early seventeenth centuries. But regrettably it proves impractical positively to determine their relative extent. Church land registers might, however, reflect the significance of at least two different types of forest property related to ministers' residences.

In 1567 and 1569 two such registers of the local church lands – i.e. glebe lands and church tenancies – in Zealand and Skåne were produced.[75] The wording of neither, however, is very consistent when it comes to description of forest rights/possession. In the Land Register of Zealand, the woodland reports can be divided into five classes: 1) part in *fællesskov*, 2) part in wood covered *overdrev*, 3) woodlots, 4) woodlots in the field and 5) more or less specified rights to pannage, coppice and fuel wood. It is obvious that these groups are not classes in a mathematical sense. Group 5 might, for example, very well include group 1 and 2 etc.

The same applies to the Land Register of Skåne. Here, however, only two distinct

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69. Lolland-Falsters herredsbøger 2, p. 36: 'y gammell tiide haffde Løgetoffte kircke it wognehug y Kiøbeløff skouff'.
70. Lolland-Falsters herredsbøger 2, p. 49.
71. Repertorium Diplomaticum regni Danici Mediaevalis II, no. 9175 (9.10.1500).
72. Skiftet efter rigsråd Eske Brock 1626, p. 106 (no. 1282): 'nogenn loder wdi nogenn wschiffte schouffue [...] dogh huor stuor loden kand were widis icke'.
73. Lolland-falsterske herredsbøger 2, p. 98: 'Degnen haffuer frj skous paart, naar der byttis skou, entten paa Nørreskou eller Slemminge skoue' and p. 112: 'Jldebrand, nar skouff byttis om vinteren, bekomer ieg lige vid gaardsederne och icke videre'.
74. N. Å. Nielsen 1966, p. 54.
75. Sjællands Stifts Landebog 1567; Lunds Stifts Landebok 1-3.

classes emerge namely 3 and 5. Furthermore, it is obvious that the records on glebe lands cannot be exhaustive regarding woods. In areas with positive evidence of extensive woodland, the vicar allegedly took no part in its usage. And in Store Melby (Albo District) no wood is attributed to the vicarage, but we are told that 'in the new field by Kivik the vicar shall have as much as anybody in the village if he will cut the forest and clear the ground'.[76] Since all farms did not necessarily take part in a village wood, it is indeed possible that the vicar was simply one of the unfortunate. It just does not seem very likely. It is more likely that the Land Register records are defective.

The data from Zealand suggest that *fællesskove* were by no means predominant during the 1560's. When examining 148 woods described as either '*fællesskov*' or 'woodlots' (*skovlodder*) but leaving 109 vicarages with non-descript forest rights out, 11 (28 %, Σ=39) belonged to the former group.

Establishment of village boundaries

Almindinger and *overdrev* were characterised by the absence of internal, physical boundaries. Since they were both regarded as common property, no such borders were needed. But during the processes that turned open access *almindinger* into *overdrev* and *overdrev* into *fællesskov* a spatial division took place, a division that coincided with the very geographical definition of the extent of each village, manor or single farm.

The need to define village boundaries emerged when population increase induced a growth in the consumption of natural resources. Fields had to be enlarged by cultivation, new grasslands were seized and cleared, and adjacent woodlands were appropriated. So the indistinct buffer of 'no man's land' that had previously formed an inherent element of a cultural landscape dominated by 'open-access commons', no longer sufficed as resource property demarcation. Physically fixed borderlines or boundary marks dividing neighbouring village lands had to replace it. And since woods covered many of the marginal outfields where the dividing lines were supposed to go, the process of rectification inevitably also became one of forest enclosure.

This process of fixing borders continued from the Middle Ages throughout the entire early modern period. The means by which new borders were made and old ones recapitulated was perambulation by jurors (*nævninge*) and elders. Frequent reiterations were, however, needed because the exact whereabouts of the demarcation soon became obscure. As late as the 1750's, the borders between three villages in

76. Lunds Stifts Landebok 2, p. 227: 'Jtem wdj den ny wong wid Kiffwiig skall presten haffue ssaa megidt som nogen y byen om hand will hugge skouffuen aff och rödde iorden'.

Central Jutland were 'so inadequate and dubious that […] it is totally impossible to determine any firm borderline'. [77] And it was an obvious precondition for the internal distribution of natural resources that the external village borders were firmly established.

All written evidence on the matter describes the process as one of reiteration. So, whether it went through woods or not, the borderline is supposed to originate from a pre-writing period.[78] And it actually appears that, in general, the rough perimeter of each settlement's resource area had already been established during the late Iron Age.[79] Still custom was a significant argument in matters of land use and property, and we may not always have to accept this position at its face value. In some cases of drawn-out legal quarrel, an original consensus about the dividing line between two villages certainly seems far-fetched.

This was the case when the fifteenth century struggle among the tenants of Rørbæk, Majbølle and Berritsgård concerning forest rights in the woods on the ambiguous border between Berritsgård and Rørbæk (p. 155) continued in the sixteenth.[80] And in the nearby Hillested and Erikstrup, the tenants by 1501 were 'in common with one another and over-cut the woods'.[81] Other examples exist but in general they appear to belong to the very first part of the period.[82]

Evidence of village delimitation is mostly related to creation or extension of manorial *enemærker*. This was the case when the boundaries between Ryegård *enemærke* and the fields and woods of the neighbouring villages of Ejby and Langtved were fixed in 1579.[83] A ditch continued to separate Langtved's Stumpeskov from Ryegård. In contrast, it was decided that the manor's possessions in the fields of Ejby could be incorporated in the *enemærke* as its northern part.

Preceding or maybe rather simultaneous with the establishment of village boundaries, the physical outlines of the natural resources pertaining to a certain settlement was defined as its '*fang*'. The term is derived from the verb *fange*, i. e. to 'get' or 'achieve',[84] and it was first employed in this meaning in Erik's *Sjællandske Lov*.[85] In

77. C.f. B. Fritzbøger 2001: 'så næppe eller dubiøse, at […] det dog [bliver] en pur umulighed at determinere noget fast skel'.
78. E.g. Repertorium Diplomaticum regni Danici Mediaevalis II, no. 9858 (8.6.1503), no. 10167 (8.10. 1504) and no. 11364 (14.10.1509).
79. E. Porsmose 1987, pp. 44 ff.
80. C. Molbech 1841.
81. Repertorium Diplomaticum regni Danici Mediaevalis II no. 9329 (21.3.1501): 'sidder i fellid med hverandre og forhugger skovene'.
82. Repertorium Diplomaticum regni Danici Mediaevalis II no. 9615 (25.5.1502), 9746 (1502), 9834-35 (1.5.1503), 9841 (8.3.1503), 10126 (24.7.1504), 11486 (8.3.1510).
83. Danske Domme 1375-1662 III, no. 471 (30.11.1579).
84. Ordbog over det danske Sprog VI (1922), col. 738-40.
85. Danmarks Gamle Landskabslove 5, pp. 206 ff (ESL II.68).

Fig. 18: *The* enemærke *belonging to the noble manor Ryegård in Zealand. Marked on a section of a road map from 1793. Rigsarkivet.*

most cases, however, it was employed indistinctly. From the written evidence, it is normally impossible to determine whether a spatial definition of the resource area has taken place or not.

According to a Supreme Court sentence of 1401, for instance, the forest of Kildeskov on Falster belonged to *Bruntofftefang*.[86] This is most liable to be interpreted as the adjoining lands of the village Bruntofte, to which the wood is known to have belonged throughout sixteenth and seventeenth centuries.[87] Similarly, when by the

86. De ældste danske Archivregistraturer I, pp. 117 f.

87. B. Fritzbøger 1989B, p. 246.

beginning of the fourteenth century Starreklinte appeared as split up into a northern and a southern '*fang*', this was explained by the fact that the hamlet was the result of an amalgamation of two former settlements.[88] And in 1469 a minister is reported to have use rights to all woodland in the '*fang*' of his parish (*sognefang*).[89]

In this way, *fang* resembles the way in which the totality of natural resources 'belonging' to a certain settlement is described in the so-called '*pertinens-formulas*' of medieval deeds. One out of numerous examples of this kind of listing is found in the description of the bishop of Roskilde's possessions in Snuderup. According to his land register of 1370, he owned the village 'with all Snuderup '*fang*' with all mentioned holdings with whatever belongings and adjoining lands, namely fields, meadows, pastures, woods, fisheries, wet and dry, mobile and immobile, nothing excepted'.[90]

The reference to woodland in such formulas tends to serve as mere *topoi*, which makes it difficult actually to employ them as positive evidence of historical disappeared forests.[91] Still, an evaluation of medieval title deeds pertaining to the two monastic institutions in Esrum and Dueholm clearly indicates that a distinction regarding the actual natural resources really was made.[92]

What the *fang* concept basically testifies is the association between settlement and wood originating from the initial division of *almindinger* and *overdrev*. This fundamental association was also expressed by the naming of woods using the settlement name in the genitive case. Numerous medieval examples of this exist, such as when in 1130 the magnate Knud Lavard, according to the Chronicle of Zealand, 'was martyrized in Haraldsted's wood'.[93] From the simple economical and geographical relationship between village and wood emerges a proper name.

The junction between wood and village was usually obvious for purely geographical reasons: the wood belonged to the *fang* of the nearest village or single farm. But in a number of cases, the relationship proved more unpredictable. A twelfth century example is Jernbjerg's part in the eight kilometres distant Djungsved.[94]

It is uncertain, to what extent woods in those *overdrev* that remained after the establishment of village borders were actually partitioned during the sixteenth century. But it might have been the case. The woods in Særløse Overdrev were allotted

88. Århus Domkapitels Jordebøger III, p. 12.
89. De ældste danske Archivregistraturer V, p. 846 (1469).
90. Roskildebispens Jordebog. p. 68 f: 'cum toto Snutethorpfang cum omnibus et singulis dictorum bonorum pertinenciis et adiacendiis quibuscumque. videlicet agris pratis pasquis siluis piscaturis humidis et siccis mobilibus et immobilibus nullis exceptis'.
91. As does e.g. F. Mager 1930 I, p. 76.
92. B. Fritzbøger 1997C, p. 86.
93. Danmarks Middelalderlige Annaler p. 108: 'martyrizatus est in sylua Haraldstathæ'.
94. B. Fritzbøger 1992, p. 258.

as early as in the middle of the fifteenth century. And in Kattinge Overdrev, the participant village of Herslev claimed the right to three woodlots in 1580.[95]

Towns

Albeit small-scale, a number of towns developed in Denmark during the Middle Ages. By 1500, sixty-seven such conurbations existed and they were all by definition furnished with royal privileges regarding trade and crafts. And as the social and juridical fabric of town councils and guilds differed from that of rural society, so did the property structure.[96] The internal government of the towns was regulated by town laws, whereas their external relations were basically summarised in the royal letters of privilege. Only the latter, however, hold articles on forest management.

As the economy of most towns included strong rural elements, the natural resources available to the citizens were normally defined by town privileges. This also applies to woodland, since many towns in the early Middle Ages already had their own woods, which could have considerable impact upon their economic development.[97] A 'Town Wood' (*Byskov*) belonging to Skælskør is, for example, mentioned in the late fourteenth century.[98]

In privileges, the council as representative of all towndwellers could be considered as the legal person receiving forest rights. But no positive information on the ensuing distribution of these rights among the burgers exists. So when Nyborg's rights to pasture and fuel wood in Wllemoesze, Fleskholm and Dreyheszle as far as Holthebøge were confirmed in 1435, we do not know how they were employed in praxis. The beneficiaries were 'the mayor, council and common people on behalf of the city'.[99]

In cases where a town did not possess its own wood, it had to do with forest rights in nearby royal woods, as was the case when the citizens of the small town of Æbeltoft in Jutland in 1301 were licensed to collect branches and windfalls in the royal forests.[100] Or when the king by the establishment of a town near Krogen (the later Kronborg) in 1426 granted its future inhabitants rights to all sorts of wood,

95. Rigsarkivet, Danske Kancelli B 94, 4.12.1580.
96. O. Fenger et al. 1982.
97. E. Schubert 1987.
98. Liber Donationum Monasterii Sorensem, p. 509.
99. Repertorium Diplomaticum regni Danici Mediaevalis I, no. 6791 (11.11.1435): 'Borgemester, Raad og al Almue paa Byens Vegne'; the confirmation was later validated by King Christoffer of Bavaria, Repertorium Diplomaticum regni Danici Mediaevalis I, no. 7631 (10.11.1446).
100. Danmarks Gamle Købstadslovgivning II, p. 193 (21.1.1301), with a later affirmation in Diplomatarium Danicum 3:4:459 (29.7.1356).

except oak and beech for fuel.[101] Fifty years later, this privilege was elaborated so that the fuel wood was to consist of birch, alder and windfalls of oak or beech.[102]

Forest rights such as these naturally generated a set of corresponding taxes for the crown.[103] In 1415 King Erik of Pomerania confirmed the right of the citizens of Vordingborg (on Zealand) to graze their cattle and to cut firewood in the extensive Stensved Overdrev.[104] But in 'mast years' they were required to pay *oldengæld* to the crown. The same applied to the inhabitants of Korsør, even if it proves difficult to interpret a ban to cut down the wood or trees.[105] As the interdiction appears in relation to pasture privileges, it is, however, possible that it concerns collection of leaf fodder rather than firewood.

It is difficult to discern whether the crown pursued any general policy towards the forest rights of towns. The wording of most privileges is too unclear to allow us to trace substantial differences. So when in 1442 the burgers of Horsens (Jutland) were granted free field, wood, pasture and fishery in salt water, as they had had it from time immemorial,[106] their rights were comparable with those of Vejle, Århus and Kolding.[107]

Enclosure acts

Even though legislation dealt with common usage, its main concern was to restrict the phenomenon. In varying language, all post-medieval coronation charters express the notion that when participating in commons the crown should only exploit a portion commensurate with its share.

The principle appears to have been formulated first by Frederik I in 1526.[108] It was *inter alia* carried out in Skorup where a tenant farm belonged to the parish church in Ravnkilde. In 1501 we are informed that it took 'part and common access in all the aforementioned Skorup Byskov, in Damskov and in Ravnkilde Skov as she has arable and meadow in the fields where her lots can rightfully be found'.[109] This fundamental conception, we shall see, applied to all landowners. As in German and

101. Repertorium Diplomaticum regni Danici Mediaevalis I, no. 6260 (2.6.1426).
102. Repertorium Diplomaticum regni Danici Mediaevalis II, no. 3793a (9.1.1476).
103. W. Christensen 1903, p. 379.
104. Repertorium Diplomaticum regni Danici Mediaevalis I, no. 5562 (12.12.1415) and confirmed in Repertorium Diplomaticum regni Danici Mediaevalis II, no. 4468 (27.6.1479).
105. Repertorium Diplomaticum regni Danici Mediaevalis I, no. 6222 (26.11.1425).
106. Repertorium Diplomaticum regni Danici Mediaevalis I, no. 7286 (29.11.1442).
107. Danmarks Gamle Købstadslovgivning II, pp. 117, 149 f and 172.
108. Kong Frederik den Førstes Danske Registranter, pp. 117 f.
109. Diplomatarium Vibergense no. 158 (16.3.1501): 'dele og fællig over al for:ne Skorup Byskov, i Damskov og i Ravnkilde Skov eftersom hun haver Ager og Eng i Marken, hvor hendes Del kan findes der med Rette'.

Swedish legislation, for instance, the needs and capacity of the household production was a basic key in the distribution of common right resources (p. 30).

In accordance with the coronation charters, the Kolding recess of 1558 affirms that the distributive key in all common usage of natural resources not indisputably precisely was what 'each lot and share permits'.[110] And the very last charter from 1648 replicates the traditional wording: 'wherever the crown is common with the nobility in either wood, field or fishing water, neither we nor our bailiffs should use more fishery, pannage, wood cutting, hunting or other usage than the quota of the crown can stand' (§7).[111]

Two exceptions from this general equality regarding common use did, however, occur. The charter of 1513 (§9) notes that, in the common woods of Falster, the crown holds a special prerogative to all large game (i.e. red deer). And by the time of the coronation of Christian III in 1536, Langeland was added to Falster (§8), both *vildtbaner* receiving especially mention in paragraph seven of all successive charters.

The coronation charter of Frederik I (§15) in 1523 stresses that 'in accordance with the laws of king Valdemar, neither we nor our bailiffs should prevent any man from re-allotment of wood, field or fishing water even if we take part in it'.[112] And this paragraph later re-appears as a general constituent of Danish legislation. Since the Middle Ages, belonging to a community of owners was a precondition for having the right to exploit a common. The king later stressed this in an open letter.[113] Still the most fundamental sixteenth century clause concerning woodland property was a universal claim that all common overwood should be allotted among this community.

This was first formulated by Christian II's so-called 'Rural Law' *c.* 1520, which emphasised that in *fællesskov* nobody should be allowed to cut overwood trees (oak and beech; see p. 56) before an allotment had taken place.[114] And since the clause appears in the coronation charter of his successor, this was an element of Christian's legislation that was not annulled. We find it repeated in the Dronningborg recess of 1551 (§8) and the Kolding recess of 1558 (§30).[115] And the general prescription was followed attentively by the royal administration. In 1566, for example, it was prohib-

110. Corpus Constitutionem Daniae 1, no. 1 (13.12.1558), §29: 'hver sin lod och diel kand taalle'.
111. Samling af danske Kongers Haandfæstninger, p. 104: 'Huor nogenstedz saa findes, at cronen haffuer med adelen fellig enten vdi skouff, mark eller fiskevand, da skulle wi eller wore fogeder icke ydermere bruge dervdi enten med fiskeri, olden suin, skouffhug, iagt eller anden brugelse, end som cronens lod och deel kand taale'.
112. Samling af danske Kongers Haandfæstninger, p. 73: 'Jtem skall vij eller vore fogder ey formene nogher mannd at dele tiill rebs skowg, marck eller fiskewannd. epther konning Voldemars lowgs lydelsze, ennd dog vij haffue ther lod oc deell vthij'.
113. Kong Frederik den Førstes Danske Registranter, pp. 117 f.
114. Den danske Rigslovgivning 1513-23, no. 13, §108.
115. Danske Recesser og Ordinantser, p. 237; Corpus Constitutionem Daniae 1, no. 1 (13.12.1558).

ited to cut in Billing Skov in Skåne until it was parcelled out.[116] And in 1569 all further cutting in Sonnerup Skov in Zealand was stopped for the same reason.[117]

According to the Kolding recess, it followed that unlicensed cutting in common overwood should be persecuted as if it had taken place in a private close. The article was clearly meant to protect royal interests easily jeopardised in those numerous common woods in which the crown had a share. In many cases it is most likely that the crown took the local initiative to parcel out such woods. This, at least, was the situation when Bælum Fællesskov was allotted in 1558.[118]

In 1570 a decree was issued about the common woods of Falster that were by then regarded as a hunting preserve. It sets out to state that, even though cutting in common woods was prohibited by the recess, this continued to take place. For this reason the decree declares that 'we proclaim that all common woods all over Falster in which the crown takes part should be left in peace as everybody is forbidden to cut or let be cut anything what-so-ever – be it much or not – before the woods are divided so that everyone knows his part'.[119]

When it comes to the practical execution of overwood partition, the legislation remains relatively silent. The Kolding recess states firstly (§27) that legal establishment of the extent of landed property can only take place in the court of law. Hence, the customary employment of *sandemænd* (bailiffs), jurors and elders should be secondary to court rulings. Secondly, it stresses that redistribution of landed property by employment of a measuring rope could be initiated on the request of a single participant (§28). In this process local traditions for measuring units should, however, be applied, i.e. *bol*, *fjerding*, *otting*, *tolvting*, *kvarter*, *marks of silver* or *feudal rents*. In the latter case both animal and vegetable natural resources contributing to the farm tax assessment were to count.[120] And the number of intra-village units (*bol*, *otting* etc) was always to be prescribed by local custom.[121]

The 1665 ordinance focused upon the considerable crown lands sold or mortgaged to noble and civil financiers during the 1650's. In the cases where these lands included common overwood, the new possessors were not allowed to cut trees until a partition had taken place.[122] In broad terms the subsequent ordinance of 1670 disregards the matter of overwood division. In those cases where a division was accom-

116. Kancelliets brevbøger 16.3.1566.
117. Kancelliets brevbøger 17.2.1569.
118. De ældste danske Archivregistraturer III, p. 71.
119. Corpus Constitutionem Daniae 1, no. 538 (5.8.1570)'Ti ville vi her met hafve alle de felligis skofve, som kronen hafver lod oc del udi ofver ald Falster, liust udi fred, forbiudendis alle, ehvo de heldst ere eller vere kunde, noget der udi at hugge eller hugge lade, liddet eller møgit, før end skofven blifver adskilt, och hver vid der udi sin anpart'.
120. Danske Domme 1375-1662 I, no. 96 (1542-47).
121. Danske Domme 1375-1662 I, no. 72 (1536-42).
122. Rentekammeret 212.9, no. 2281 (p. 585).

plished, however, royal forest rangers were ordered strictly to supervise 'trees and stones dividing our woods from the domains of other land-owners'.[123]

This could imply that separation of common overwood was by then a thing of the past. Yet this was clearly not the case. In the two ensuing forest ordinances, compulsory division reappears as legal basis for felling. According to the 1680 ordinance, all overwood still common should now be separated so that 'everyone is able to know his certain lot and part of the wood and conserve it properly'.[124] And this was repeated seven years later (§1).

Danske Lov of 1683 summed up some fundamental principles concerning the separation of commons including allotment as a precondition for cutting (5-10-24). It states that woods should be 'roped' in the same manner as fields (1-18-3) and that anybody taking part in a common could rightly demand its separation or even a re-allotment (5-10-11). If, in the separation of a common wood, parts of it proved to be over-cut, then the offender should compensate his partners (5-10-18). To avoid similar abuse after the separation, re-allotment of woods could only be accepted if all parties agreed. If, however, a single particular woodlot was taken over by a number of owners, then it could naturally be subdivided (5-10-19).

A collection of laws known as Thord's Articles and presumably originating from the judge Thord Little who lived *c.* 1300 contains a paragraph on forest allotment.[125] According to a sixteenth century manuscript, it declares that 'a wood, once divided, must not be re-divided even if the field is so'.[126] The wood's characteristic as an exhaustible resource makes redistribution undesirable once woodlots are defined. The Provincial Court in Viborg restated this some time during the seventeenth century.[127] As time went by, however, the need to restructure woodland property appears to have suggested a moderation. It consequently appears to have been substituted by less rigorous codes during the sixteenth century at the latest.[128] A ruling from the Provincial Court of Jutland roughly dated to the period 1521-42 thus declares that if a person who demands a redistribution of woodland has ruined his own woodlot then he is compelled to re-cultivate the forest before it can be effected.[129] And in *Danske Lov* the original principle is clearly watered down: common acceptance was sufficient basis for re-allotment.

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123. Chronologisk Samling, p. 6: ' træer og stene, som adskiller vores skove fra andre lodsejeres fang'.
124. Chronologisk Samling, p. 16: 'Enhver sin visse District Lod og Deel udi Skovene kan vide, og tilbørlig udi Agt tage'.
125. J. Kinch 1868-69. Thord's Articles are mentioned in a 1304 diploma, Diplomatarium Danicum 2:5:310 (13.3.1304).
126. Gamle Danske Landskabslove 4 (supplement), p. 80: 'Item silua semel diuisa nunquam potest fune solari diuidi, licet campus diuidatur'.
127. Danske Domme 1375-1662 VII, no. 907 (undated).
128. Such re-allotments are also known in Schleswig, T. Fink 1941, p. 56.
129. Danske Domme 1375-1662 I, no. 57 (1521-41).

The desire to re-divide formerly common woods was obvious. Following the allotment of a wood that covered the border area between Holtug, Eskelund and Klinte, the inhabitants of Klinte chose to cut where they pleased and at the same time demanded a renewed division since the other parts of the wood were allegedly better than theirs.[130] However, they were instead convicted for illegal cutting and the boundaries were upheld.

Regarding woodland boundaries, *Danske Lov* finally recites the clause firstly met in *Jyske Lov* (I.53): wherever 'one man's wood meets another man's field, the property rights of the first mentioned reaches as far as the branches and the roots of the trees, except for *'almindinger'* without particular lots where the landlord owns the ground and the peasant the wood' (5-10-20).[131] And similar phraseology is known from a few contemporary documents. A seventeenth century property transfer included 'one fourth of Skibbet Balleskov as far as the roots go and water drips from the branches'.[132]

The paragraph is, however, no less enigmatic in this context than in that of the thirteenth century (see p. 82). Nothing implies that tenants should have a specified claim on the trees in undivided commons. One notable adjustment has, however, taken place: the landowner is no longer the king but the seigneurial lord.

In spite of frequent demands during the sixteenth and seventeenth centuries that common overwood should be divided, *Danske Lov* of 1683 repeats the fundamental conception of common usage (5-10-23): 'no one shall exploit common in wood, field or fishing water more than the part of each permits'.[133] It employs the Danish term '*lod*' for part. As previously noted, this concept is rather flexible. On the one hand it clearly denotes physical parcels, e.g. separated woods. But on the other, it could also apply to a non-distinct fraction of the whole. So what the article really expresses is just that all usage of common goods should be based upon each participant's ideal share – whether geographically fixed or not.

Enclosure of *fællesskov*

Apart from the general legal injunctions, it is not always possible to determine why an allotment of erstwhile *fællesskov* took place. But if no establishment of woodlots was carried through before, the procedure formed an indispensable element in the

130. Det kgl. Rettertings Domme I, p. 228 f (10.7.1537).

131. 'Mødes Mands Skov og anden Mands Mark, da bør den der Skov eier, saalangt som Grenene lude og Roden rinder, uden det er Alminding, som ingen veed sin sær Lod udi, der eier Husbonden Jorden og Bonden Skoven'.

132. Viborg Landstings Skøde- og Panteprotokoller III, no. 6 (12.12.1656): 'nok 1/4 af Schibet Balleschouf, så vidt roden rinder, og vand drypper af grenene'.

133. 'Hvor Fælled findes, der skal ingen bruge Fælled i Skov, Mark og Fægang eller Fiskevand ydermere end hvers Lod kan taale'.

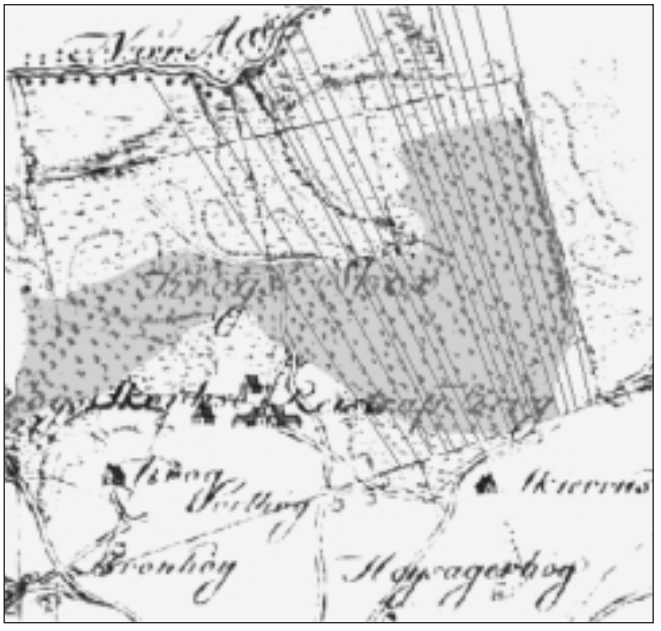

Fig. 19: *Reconstruction of the allotment of Lee Fællesskov carried out in 1573. Lines dividing the individual lots drawn upon manuscript map by the Royal Danish Academy of Sciences and Letters 1781 with its woodland signs shaded. Only the width, not the length, of each lot was measured during the enclosure process.*

preparation of property transfer. So a number of allotments and assessments of farm-based woodland rights appear in conjunction with the widespread exchanges of real property during the sixteenth and early seventeenth century.

The most developed example of forest allotment concerns the hamlet Lee in Jutland.[134] As one of the only settlements in Viborg County, its adjoining lands were distributed according to *bol*, and in 1573 a *fællesskov* was partitioned correspondingly (fig. 19). Sixteen woodlots were metered with a measuring rope of varying length according to the width of the wood. Where it was narrower the rope was about 17 meters and where it was the wider about 36 meters. The width of the individual woodlots varied from $^1/_2$ to $3^1/_2$ 'rope' as the length of the rope equalled one *fjerding*. But, as always, no length for the lots was fixed.

The written confirmation of the allotment procedure states that 'these aforementioned 12 owners and surveyors (*rebsmænd*) initiated their rope at the border between Skjern Enemærke and the aforementioned Lee Fællesskov and next by the field of Lee, as they were legally appointed by this *ting* and ordered by all good landowners in Lee Fællesskov and they measured every rope near the field seventeen fathoms long and likewise to the north in the wood as it was wider twenty-two fathoms long and then to the north neighbouring Skjern Wood as the wood is still wider they made every rope twenty-nine fathoms long, and so they divided the aforementioned wood into $5^1/_2$ *bol* as the land is distributed in the field, from east

134. A. Heise 1868-69; O. Widding 1964.

towards west through the aforementioned wood and firstly in the first *bol* to the farm that Mogens Lassen inhabits which belongs to the honourable and noble madam Gertrude, the late Anders Christensen's widow; for two *fjerding* two ropes, from Skjern Wood that is called Åstrup Wood and to the west and in the western border of the parcel they placed a stone by the field, and another stone northerly in the same border and then a third stone even more to the north in the northern extreme of the aforementioned border'. And in similar manner, they continued to measure and mark every one of the sixteen parcels. Apart from stones they marked the border with blazes in the bark of standing trees.[135]

The length of the rope employed to measure the woodlots could vary, as it did in Lee. But in other instances it was fixed throughout the entire process. In 1616 a woodlot in Flemming was measured with a rope constistently 20 *favne* (*c.* 38 meters) long.[136] In such cases the rope would not always correspond to the width of each parcel. An assessment to prepare an exchange of property of 1585 informs us, for instance, that 'there are three and a half woodlots to the mentioned half farm and three ropes in every lot, and three swine can be taken to each rope'.[137]

When the *overjægermester* prepared to issue a new forest ordinance at beginning of the 1730's, he received a number of regional reports on royal forest management that throw some light on woodland possession. As the majority of all woods appear to have been located in open fields, they were naturally divided among the peasants. Still even field strip limits were sometimes indefinite. So in Copenhagen County 'the boundary of every peasant in arable and meadow is not always recognized'.[138]

In woods serving as *overdrev*, no dividing lines were normally found. No single tenants could, accordingly, be expected to supervise them, and royal forest rangers

135. A. Heise 1868-69, p. 382 f: 'Thze for^{ne} xij egre och Rebsmendt begøntte først derres reb vidt skellet mellum Skijarens jennemercke og for^{ne} Leedtt felleds skoff och nest vde ved Leeds mark, som dij war her fraa tingij lofflig opkallt och aff alle dij gode lotseyr tyll for^{ne} Liedtt fælleds skoff tijllhuldt, och die gyorde huert reb nest vde vedt marcken xvij fagne lang, ithem nør miere ij skoffuen, som den var bredre, xxij fagne land och saa nør miere nest vedt Skijarens Skoff, som skoffuen er endtt bredre, gyorde dij huert reb xxix fagne lang, och saa skiffted for^{ne} skoff wdij 5^{1}/$_{2}$ boll, effter som jorden skyfftes ij marcken, wdij østre och vestre tuert offuer for^{ne} skoff och først ij thz første boll till then gaardt, Mogens Laassen ijboer, som hør erlich och welbyrdige frue Gyartrude, saalig Anders Christenssens effterleffuerske tyll, for ij feyring ij reb; fraa Skijarens skoff, som kaldes Aastrup skoff, och vester paa och ij tz vestre skell aff same skiffte satte [dij] en stenn nest vde vedt marcken, item en anden steen nør miere ij same skell, och then tridie stenn end nøre miere och nest vedt thij nørre ender ij for^{ne} skell'.

136. Viborg Landstings Dombøger 1616-1618, 1616B no. 203.

137. Rigsarkivet, Danske Kancelli B94 18.6.1585: 'findis ther iiij skouskiffter thill forn halffuegaardt, och iij reb udj huert skouskiffte, Och kand ther thagis iij suin thill huert Reb'.

138. Dansk skovbrug 1710-33, p. 85: 'ej vides hver Bondes skiæl paa Agger og Eng'.

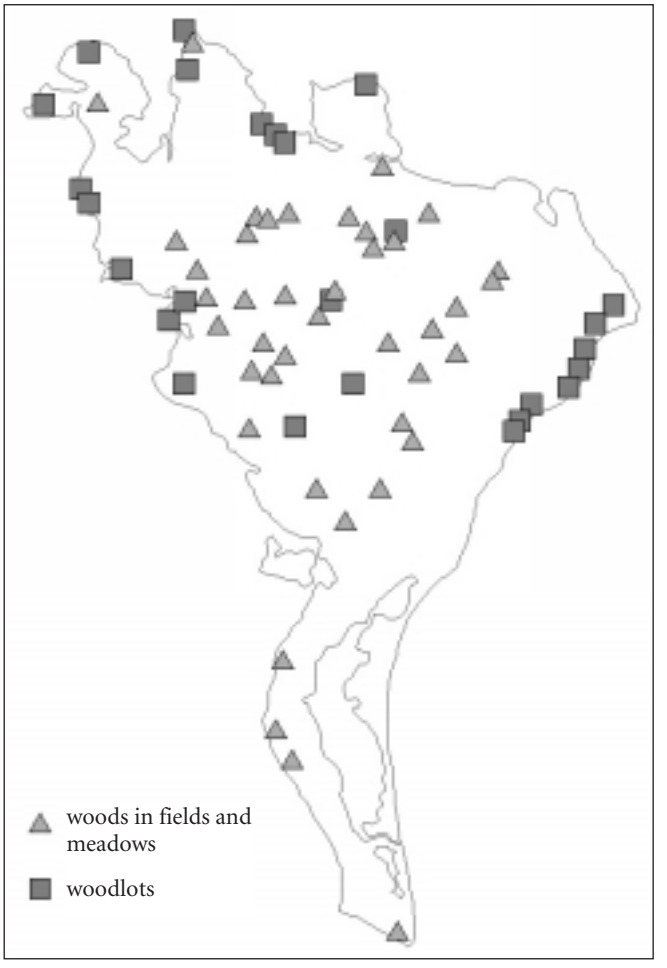

Fig. 20: *Map of the different kinds of woods on Falster in the eighteenth century. Some followed the division of arable fields and meadows, whereas others were partitioned by rope in 1719. The latter was mainly the case with major coastal woods*.[143]

were usually attached to such woods.[139] So in spite of centuries of strict legislation, a number of forests were still not divided. From Møn we are informed that 'among the peasants in this island the woods have not been partitioned in such a way that everybody knows his part of them'.[140] But in Falster and Funen the royal woods were divided in 1706 and 1720.[141] Hem Skov in Jutland was divided as late as 1740.[142]

So, by the beginning of the eighteenth century, a great number of royal forests were allotted. The process was most likely instigated by the establishment of regi-

139. Dansk skovbrug 1710-33, pp. 116, 172.
140. Dansk skovbrug 1710-33, p. 181: 'I Blandt Bönderne her paa Landet er Skovene ei saaledes Skifted, at en hver veed sin Lod og Deel derudi'.
141. Dansk skovbrug 1710-33, pp. 189, 202.
142. Rigsarkivet, Rentekammeret 2485.17.

mental districts *c.* 1718-19, but doubt still remains as to whether it represented just a rectification of already existing woodlots. This at least appears to be the case on the island of Falster, where allotments had previously taken place in 1602.[144] Similarly, some woods in Koldinghus Cavalry Estate were allotted in 1706 even though woodlots were already recorded as existing in 1683. So this allotment took place expressly 'mostly according to old borders'.[145]

The 1719 crown wood allotments on Falster and Lolland were recorded in order to avoid 'circumstantialities and quarrels'.[146] The division measured the individual lots according to their tax assessment (in *tønder hartkorn*). Dividing lines were marked with 1 metre long sticks, of which one third was above ground. A crown, the year and the farm number were branded on each stick. As was the case with *rebning* of the arable, only width was measured whereas the length of the woodlots apparently could fluctuate considerably.

On Funen a largely similar allotment took place in 1718.[147] Here four settlements with integrated open fields namely Lunde, Høje, Bobjerg and Langkilde shared the two woods, Øksnehaven and Højeris, in such a way that every one of the altogether 27 farms received one or two woodlots each. In total 35 parcels were created. The sequence of woodlots did not follow the order (cadastral numbering) of the farms, but neither did the distribution of field strips.[148] Meanwhile, some woods in the neighbouring Kværndrup parish were also allotted.[149]

Marks, memory and writing

When inter-village *overdrev* were partitioned and intra-village *fællesskove* were enclosed, property rights were assigned to specific geographical areas. Their extent could be marked in the landscape either by conspicuous points or by a full-drawn line. And both kinds of marking could be either natural or man-made. In general, borders appear to have followed brooks or other natural borderlines wherever possible.[150]

Stones, sticks and blazes were frequently employed to supplement natural demarcations.[151] So the description of the borders of Øm Abbey's possessions in Djursland

143. Rigsarkivet, Rentekammeret 333.18.
144. H. Hjelholt 1932, p. 186.
145. Rigsarkivet, Rentekammeret 3323.181: 'det meste efter gammel skiel'.
146. Rigsarkivet, Rentekammeret 333.18: 'vidtløftigheder og disputer'.
147. Rigsarkivet, Rentekammeret 333.185; P. Jensen 1896, pp. 65 f.
148. Rigsarkivet, Christian Vs Matrikel, Markbog 371 (1682).
149. P. Jensen 1896, p. 65 f.
150. E.g. Repertorium Diplomaticum regni Danici Mediaevalis II, no. 6278 (6-12.6.1488).
151. C. f. A. Hoff 1997, pp. 139 f.

includes a couple of boundary marks in the form of large trees.[152] In an undated (fifteenth century?) document a lot in *Wiiszløff sckoff* was marked with stones.[153] Stone piles were generally considered as certain evidence of prescriptive rights.[154] And when two freehold woodlots in Vester Alling (Jutland) were perambulated in 1496, the surveyors used several different kinds of marks: the westerly side of an elder bush, a forked beech, stone and stack, an oak bole, two stones lying in a beech root, a line of stones, a shredded oak, an oak stump etc.[155] In other examples, holes dug or small mounds served as marks.[156] More surprisingly, in a number of cases the perimeter of wood closes is even described as ditched.[157]

In a legal case about fraudulent designation of woodlot borders, we are told that the nobleman 'Erik Rosenkrantz was himself riding with them together with Gaell Ingemer Ibsøn, who walked in the front, and Jørgen Jensen behind with a spade and Bernt Nielsen with an axe. They dug marks in the ground with the spade where boundaries should be made and cut branches off the trees as wood-limits'.[158] Charcoal was sometimes placed under the boundary sticks and stones in order to testify their proper location in case of later disagreement.[159] And in 1515 the Supreme Court decided that individual parcels (*stuf*) on the land of others could only be maintained if stones and ditches were visible.[160]

As the allotment of former *fællesskov* concerned only the forest trees, neither ditch nor fence was normally needed. But in some cases the newly shaped woodlots appear to have been fenced off.[161] In 1578 a farm in Vindinge had a woodlot characterised as 'a piece of *enemærke* wood which is fenced'.[162] And in 1654 Cort Færgemand's woodlot in Nørre Alslev Skov was described as his *Indlycke* (close).[163]

The custom of enclosing parts of common fields may have been particularly

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152. Scriptores Minores II, pp. 263 f.
153. De ældste danske Archivregistraturer V, p. 240.
154. Danske Domme 1, no. 16 (12.4.1466).
155. Repertorium Diplomaticum regni Danici Mediaevalis II, no. 8232 (10.10.1496).
156. Repertorium Diplomaticum regni Danici Mediaevalis II, no. 4570 (24.1.1480) and no. 5053 (13.7.1482).
157. E.g. Repertorium Diplomaticum regni Danici Mediaevalis II, no. 1662 (13.11.1463).
158. Danske Domme III, no. 374 (22.3.1571): 'Erick Rossenkrandtz wor ther sielff personnlig ridende houß tilsted med Gaell Jngemer Jbsønn, som gick fore, och Jørgen Jennsønn epter mett en spade, och Berntt Nielsønn mett in øxe. Ther sloge the mercke wdj jordenn mett spadenn, huos skell skulle settis, och huge grennerne paa threne till skouffskell'.
159. A. Berntsen 1656 3rd Book, p. 471; e. g. Landsarkivet for Sjælland, Falster Nørre herreds tingbog 10.4.1654.
160. Danske Domme 1375-1662 I, no. 50 (4.8.1515); see also no. 16 (12.4.1466).
161. E.g. Repertorium Diplomaticum regni Danici Mediaevalis II no. 9533 (15.1.1502) and Kancelliets brevbøger 27.1.1641.
162. Rigsarkivet, Danske Kancelli B 94 5.7.1578: 'ith stycki Enmerchis skouff som er Indgired'.
163. Landsarkivet for Sjælland, Falsters Nørre herreds tingbog pp. 75r f (14.12.1654).

strong in southern Jutland.[164] In 1584 a royal letter instructed the crown tenants in Koldinghus County to stop using wattle fences around paddocks and meadows and to replace them by ditches instead.[165] And as the inhabitants of Hjarup some sixty years later refused to maintain the ditches against the neighbouring village Seest, the peasants of Seest were ordered to do it themselves.[166]

Village boundaries separating former *overdrev* are primarily known thanks to the conflicts they induced. Two examples, both of which are from the island of Lolland, might elucidate both the frequently lengthy process of division and the social clashes it could provoke.

In 1438 court officials determined the boundary between the two villages Radsted and Majbølle from Vixnæs Skov easterly towards Stienhøyæ and further to Hiluæthes Bæk.[167] In 1454 the Supreme Court resolved that the inhabitants of Rørbæk and Berrits could 'free' their swine in Vigsnæs Skov without paying *oldengæld*.[168] And in 1498 the king granted the inhabitants of Majbølle the right to cut trees in Radsted and Rørbæk for their own supply.[169] They should, however, await an inspection of the village borders before they set to work on the cutting. This proved to be too much to ask. Less than one year later, the Majbølle peasants were summoned to the provincial court in Sakskøbing accused of cutting trees on the wrong side of the old village border.[170] As a result of the lawsuit, the borderline was confirmed.[171]

Near Radsted, the village Hjelm at some point during the early Middle Ages produced the minor colonial settlement Hjelmbølling. It is now deserted and its exact localisation is unknown, but it was most likely situated in the woodland area west of Hjelm.[172] The new hamlet controlled its own enclosed lands, but it remained for some time undecided if it also enjoyed partial rights in the neighbouring forests of Radsted. After a thorough investigation, 12 surveyors in October 1457 concluded that 'Hjelmbølling never had had woodlots together with Radsted outside their own

164. T. Fink 1941.
165. Corpus Constitutionem Daniæ II, no. 371 (9.9.1584).
166. Kancelliets Brevbøger 27.1.1641.
167. Referred to in Repertorium Diplomaticum regni Danici Mediaevalis II, no. 8861 (25.7.1499).
168. Repertorium Diplomaticum regni Danici Mediaevalis II, no. 385 (5.8.1454).
169. Repertorium Diplomaticum regni Danici Mediaevalis II, no. 8644 (18.9.1498).
170. Repertorium Diplomaticum regni Danici Mediaevalis II, no. 8861 (25.7.1499) and repeated accusations in no. 10350 (8.4.1505).
171. The struggle, however, continued: Danske Domme III, no. 365 (26.9.1570), Kancelliets Brevbøger 10.6.1570.
172. Since Hjelmbølling – according to Repertorium Diplomaticum regni Danici Mediaevalis II, no. 1490 (13.6.1462) – was located between Hjelm and Radsted, the identity of Hjelm and Hjelmbølling presumed in Danmarks Stednavne 11, 1954, pp. 136 f cannot be upheld.

fence'.[173] The investigation was conducted again the following week in the parish court but a final verdict was not reached until a year later in the Supreme Court.[174] Finally, surveyors from the *landsting* in 1462 concluded that the forest located between Radsted and Hjelmbølling belonged to the former.[175]

In the first case, the absoluteness of physical boundaries appears only gradually to have become perceptible and acceptable to all concerned. Even state servants remained ambiguous about its significance for half a century. The establishment of a forest border between Radsted and Rørbæk on the one side and Majbølle on the other proved insufficient to express the respective woodland rights of the three villages. But the thought that Majbølle retained some property rights on the 'other side' of the border, appears not to have been all that improbable to contemporaries. So the enclosure of woodland *overdrev* among the participating settlements needed not result in an all-inclusive division of property rights.

The case of the *torp* Hjelmbølling outlines the way in which medieval settlement expansion and internal colonisation made the need for fixed landscape boundaries urgent. As Hjelmbølling was the offspring of Hjelm, it could claim no rights in Radsted.

Common stock grazing was a major reason for the uncertainty in regard to the actual consequences of village borders. In arable fields, the significance of boundaries was restricted to cultivation, whereas common pasture in the fallow fields of neighbouring villages – so-called inter-commoning (*vangelag*) was widespread.[176]

As suggested by the Majbølle example, the same relative character of the boundaries applies when it comes to forest resources. In 1457 the minister of Sædinge (Lolland) was informed by the elders of his congregation that his predecessors had enjoyed the village woods for coppice, fuel wood and timber, and that they had had pannage rights in Sædinge Wood and in the woods joined with Sædinge Fang.[177] So the village boundary was effective as regards the production of wood but not when it came to pannage or – one must assume – pasture.

Custom was essential for the maintenance of landscape boundaries and forestry rights. An overriding argument in most quarrels, therefore, was what things had

173. Repertorium Diplomaticum regni Danici Mediaevalis II, no. 767 (14.10.1457): 'Hielmbøllinngh haffde aldrigh schouffslodt medt Radstedt mendt wdenn deris hawe'.
174. Repertorium Diplomaticum regni Danici Mediaevalis II, no. 770 (23.10.1457) and 894 (8.10. 1458).
175. Repertorium Diplomaticum regni Danici Mediaevalis II, no. 1490 (13.6.1462), cf no. 12743 (after 1458).
176. B. Fritzbøger 2000B.
177. Repertorium Diplomaticum regni Danici Mediaevalis II, no. 780. (27.11.1457).

been like '*af Arilds tid*' (since old times).[178] Consequently personal age was of primary importance when surveyors were elected to testify the course of a boundary. They were expected to remember the testimonies given by the forefathers. Courts in general emphasised that the men chosen were the oldest and best qualified.[179] If not, they were expected to get advice from their 'father and forefathers'.[180]

In a case over the boundary between Ørritslev and Gerskov dating from 1584 it was noted, for example, that some of the witnesses could recall things fifty years back.[181] Still, written evidence was increasingly required as a basis for the work of jurors and elders. So, as purportedly old use rights in Stouby Skov could not be affirmed by written evidence in 1591, the court disregarded them.[182] And it is exactly from such written evidence that our knowledge of the procedure of demarcation is deduced.

For the later part of the period, prescriptive rights in lawsuits could only be substantiated by written documents – not by the saying of elders.[183] And, according to *Danske Lov*,[184] certified copies could only support the rejection of wrongful claimants and not the positive vindication of property. But by the beginning of the sixteenth century, the age of witnesses was still a cardinal issue in cases of property claims.[185] And perambulation by witnesses formed an important argument.[186]

No precise locations could be defined in the largely pre-cartographic era of the sixteenth and seventeenth centuries. But attempts were made to fix borders by descriptions in writing. So, when two parties in 1598 were competing over the boundary line between Vrå and Vibtorp Skov, more than thirty letters were produced, the oldest of which dated back to the fifteenth century.[187]

Apart from written evidence and the memory of the elders, elementary consent among the involved landowners was of primary importance if the local village community was to respect the new lots and their borderlines for years to come. So in some cases the testimonies produced by the local court affirms not only the actual allotment but also the acceptance of all parties.[188]

178. E.g. Repertorium Diplomaticum regni Danici Mediaevalis II, no. 1069. (12.1.1460).
179. E.g. Repertorium Diplomaticum regni Danici Mediaevalis II, no. 5 (20.1.1451), 780 (27.11.1457).
180. Repertorium Diplomaticum regni Danici Mediaevalis II, no. 1069 (12.1.1460): 'aff fader och forelder'.
181. Danske Domme 1375-1662 IV, no. 516 (2.7.1584).
182. Danske Domme 1375-1662 V, no. 673 (23.10.1591).
183. Danske Domme 1375-1662 V, no. 673 (23.10.1591).
184. 5-10-2: 'Med Vidisser kand mand Gods forsvare / men ej vinde Gods'.
185. Repertorium Diplomaticum regni Danici Mediaevalis II, no. 9848 (25.5.1503); no. 11240 (10.4. 1509).
186. Repertorium Diplomaticum regni Danici Mediaevalis II, no. 9175 (9.10.1500).
187. Kongens Rettertings Domme 1595-1604, pp. 211-219.
188. E.g. Repertorium Diplomaticum regni Danici Mediaevalis II, no. 10037 (12.3.1504).

In others the number of witnesses confirming property claims appears to have been crucial. Six, eight or twelve members of the local community would act as warrants. It made an impact, therefore, when Harlev Church's woodlot in Lillering in 1480 was perambulated by twelve of the best and most able freeholders.[189]

Provincial laws distinguished between jurors and compurgators (*mededsmænd*). While the former were frequently appointed by the court and expected to guarantee the innocence of the accused – not only formally, it appears, but also based upon factual knowledge of the case – the latter appeared on behalf of the defendant.[190] Bailiffs (eight in each district), on the other hand, were appointed by the king to function as permanent surveyors for the district court.[191]

The time argument conforms to the essential predominance of prescriptive rights in questions regarding property. When no one defrayed the actual possession of a certain piece of land, the holder would over time gain rights to it. If no objections were made *against* a claim, then, this served in itself as a weighty argument *for* it.[192] The *possessio* argument of theoretical jurisprudence weighed heavily in everyday life.

The reestablishment of ancient boundaries was ordinarily based upon negative legal evidence. In 1461 eight jurors in Funen swore that no-one except the royal steward had ever received *skovleje* or *oldengæld* of Staffuerskow.[193] A fifteenth century verdict from the provincial court of Jutland persistently concluded that, if the boundary marks of older perambulations were still visible, no rectification should be made.[194] But no matter what kind of boundary marks were employed, they were easily corrupted. And in those cases a rectification could only be based upon the custom expressed as collective remembrance. Loss of collective memories could consequently disintegrate property rights. In 1660 'no one lives who can make known how much each is entitled to' in Veerst Skov.[195]

Distributive keys

The practical establishment of woodlots was on the whole similar to the process that distributed other kinds of land among village dwellers. The land was measured and assessed, dividing lines were established and the resulting lots then distributed among the participants.

189. Repertorium Diplomaticum regni Danici Mediaevalis II, no. 4568 (19.1(?).1480).
190. A. Hoff 1997, p. 337.
191. A. Hoff 1997, p. 344.
192. E.g. Repertorium Diplomaticum regni Danici Mediaevalis II, no. 1746 (19.5.1464).
193. Repertorium Diplomaticum regni Danici Mediaevalis II, no. 1347 (30.9.1461).
194. Danske Domme 1:16 (12.4.1466).
195. Rigsarkivet, Rentekammeret 311.47: 'Er Ingen leffuendes som kand giørre under rettning huor meget Enhuer tilkommer'.

A deed from 1480 mentions 'one rope's woodlot'.[196] The rope (*reb*) also used in Lee was the chief land measuring instrument of the time, hence the Danish verb '*rebe*'.[197] As alternative to the rope, a lath (*raft*) was sometimes applied.[198] The parcels resulting from the division of the forest seems to have been distributed by lots. Actually, the semantic core of the modern expression 'drawing lots' (*lodtrækning*) refers to this procedure.

Fifteenth and sixteenth century evidence concerning allotment implies that only one direction was measured so that only the width (but neither the length nor the acreage) of the lots was computed. In the case of Flemming (p. 151), the surveyors advanced from north towards south. In the westernmost position the lot measured 10 ropes, a bit more easterly it was the same, but in the eastern corner it measured only 5 ropes. So, if no adjustments were made to reflect the changing forest outlines in width as well as in length, discrepancies must frequently have existed between farm-wise woodland rights and the corresponding woodlot acreages. But in at least one case two sets of measurements appear to have been determined upon.

For some years during the fifteenth century, Lystrup Skov in Jutland was subject of repeated clashes of interests.[199] From the documents originating from the suits, we are informed that an attempt was made to allot the wood into three parcels but that it failed since one of the participants, Knud Tammesen, insisted on choosing first. The dispute was not solved until three paper lots each representing a woodlot were drawn (or rather thrown) randomly from a glove. And when new lots were metered out in 1497, this explicitly took place first from east towards west and then four times crosswise. According to Thord (see p. 148), the articles appearing in provincial laws about the re-division of land were actually not valid in regard to woodland. But as this case shows, his view was not always observed.

In *fællesskove* the use rights of each participant normally corresponded to the size of his holding relative to the village total. When such woods were allotted, this proportion was accordingly used as the key unit from which the parcels of each farm were metered out. Yet the way to measure both the total and its fractions took various different forms.

As in Lee (p. 150), the medieval *bol* and its subdivisions were widely used.[200] So, even woodland assessments in Koldinghus County produced by the early absolutist

196. De ældste danske Archivregistraturer II, p. 367: 'itt reebs skouffskiffthe'.
197. Liber Donationum Monasterii Sorensem, p. 507.
198. E.g. Repertorium Diplomaticum regni Danici Mediaevalis II, no. 8607 (16.6.1498): 'rawth'.
199. Repertorium Diplomaticum regni Danici Mediaevalis II, no. 2617 (3.7.1469), 4256 (27.7.1478), 4870-71 (25-28.5.1481), 5261 (3.7.1483), 5526 (14.8.1484), 5883-85 (18.5.1486), 5917 (7.8.1486), 6026 (11.2.1487), 6440 (10.2.1489), 6507 (4.6.1489), 6795. (10.11.1490), 7143 (24.5.1492), 7242 (5.11.1492), 7715 (21.8.1494), 8453 (24.8.1497), 8634 (20.8.1498), 9519 (5.1.1502).
200. E.g. Repertorium Diplomaticum regni Danici Mediaevalis II no. 10025 (19.2.1504), no. 10783 (20.3.1507), and De ældste danske Archivregistraturer I, p. 211 (1496) and V, p. 1090 (1532).

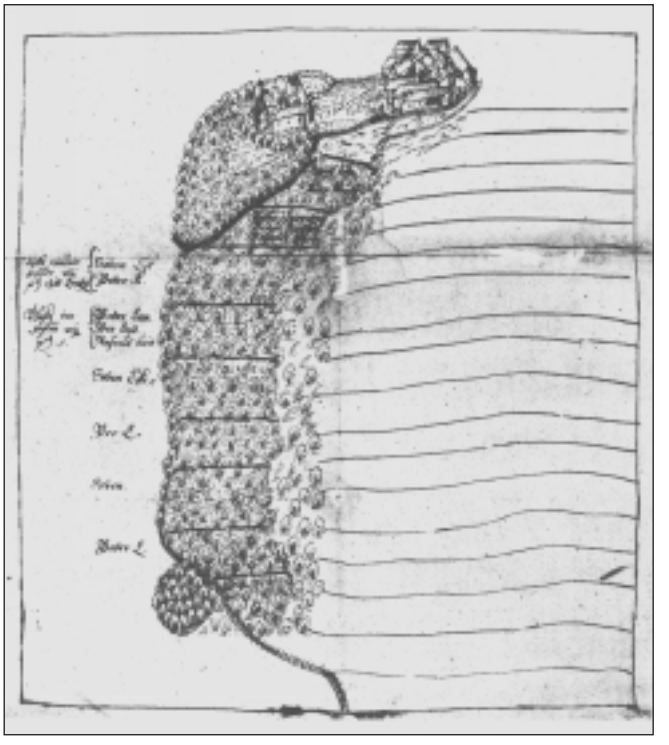

Fig. 21: *Wood and field parcels belonging to eight tenant farms in Tygestrup, a hamlet that had been dissolved by the manor of Kongsdal before 1596. The manor is shown in the top of this manuscript map dated c. 1600. Nationalmuseet.*

state were based upon this ancient gauge.[201] In 1594 a court ruling even emphasised that common woods on land that was divided according to *bol* should not be allotted in accordance with, for example, the feudal rent.[202] In Fredsted the 1660 woodland *bol*-total in this way corresponded to a late fifteenth century assessment covering all village lands.[203] The same register applied an assessment based upon pannage as the foundation for future taxation, so that the two woodland measures concurred. But as the woodland *bol* were relative, the *bol*-to-pannage ratio vacillated greatly – with 1 swine's mast per *otting* as minimum and 12 as maximum.

Svend Gissel concludes that woodland possession was determined according to the annual *skyld*.[204] As the above-mentioned ruling shows, this was sometimes the case.[205] And in 1596 the Supreme Court decided that if no ancient land valuation

201. Rigsarkivet, Rentekammeret 311.47: Land Register of Koldinghus len 1660.
202. Danske Domme V, no. 713 (9.2.1594).
203. Gamle Jydske Tingsvidner no. 93 (13.3.1479).
204. S. Gissel 1968, p. 143.
205. E.g. Kancelliets brevbøger 13.10.1562.

could be used as a distribution key, then a division should follow the 'old rent' and not a new pannage assessment.[206]

As some connection did exist between the 'old rent' and the production capacity of each tenancy,[207] woodlots could also be measured according to possessions in fields and meadows.[208] In more indefinite terms, the Supreme Court in 1555 decided that in a *fællesskov* in which others had a part, the *herlighed* 'with wood cutting, forest rangers, hunting of roe deer and pannage' should be divided among the owners according to their lots in the villages.[209] When jurors in 1500 concluded that the width of a woodlot pertaining to Rossildgård should equal its *marckgord* – interpreted as its *toft* – then it might reflect a situation in which the wood was situated in the field.[210]

There was, however, no simple correlation between either the production capacity of the arable as measured in the amount of seed normally applied (*udsæd*) or the land rent (*skyld*) on the one hand, and the woodland possession of each farm on the other. So in Sønderborg County in Schleswig, Søren Balle found major discrepancies between the plough-tax expected to express the production capacity and the *oldengæld*.[211] Contrarily the correlation coefficient (Pearson) between the relative portion of seed and woodland assessments at village level of the crown tenants in Koldinghus County in 1662 has been computed to be 0.90 thus showing a convincing correlation between the two ($\sum$=75). So in broad lines woodland rights must have corresponded to the entire landed possession of each holding.

Until the eighteenth century, the capacity of woods to produce 'mast' and consequently to feed hogs was the only available measure applicable to this complex natural resource.[212] So when the extent of woodland property rights was to be fixed – whether relatively or in absolute measures – the mast production constituted the most frequently applied basis.

According to article III.55 of *Jyske Lov*, partial pasture rights in common outfields should accord with 'the number in which swine are sent on pannage'.[213] The unit

206. Corpus Constitutionem Daniæ 1, no. 1, pp. 25 ff; Kongens Rettertings Domme 1595-1604, pp. 118 f (14.6.1596).
207. S. Gissel 1968.
208. Diplomatarium Vibergense no. 158 (16.3.1501).
209. Danske Domme 1375-1662 II, no. 218 (1.9.1555): 'meth skoffhuge, skoffgiemere, raaiagt oc oldengieldt'.
210. Repertorium Diplomaticum regni Danici Mediaevalis II, no. 9016 (12.1.1500); a similar example is found in no. 10289 (21.1.1505)
211. S. Balle 1992, p. 175.
212. F. W. Galpin 1926; H. C. Darby 1950, pp. 22 f; C. L. ten Cate 1972; B. Fritzbøger 1990B.
213. Gamle Danske Landskabslove 2, p. 470: 'oc læggæ til theræ fælæth. swo sum swiin læggæs til aldæn'.

engaged was 'the number of swine that could be nourished in the wood in a year with plentiful mast' – in Danish: '*svins olden*'. Both the feeding procedure and the rents originating from it are technically called *pannage*. So a court ruling from 1457 establishes that Mrs. Magaretha of Slangerup owned such large parts of the forest area between Kregme, Sonnerup and Kulerup (Zealand) that she could freely feed 471 swine.[214]

By the fifteenth century, this kind of measurement was already old. The land register of the Chapter of Århus dated *c.* 1313 includes several assessments in the form 'a little wood in which forty pigs can be fed when there is pannage'.[215] It furthermore relates the taxation of *svinslæg* (i.e. 6 swine) to the evaluation of the arable in 'marks of gold'.[216] So we here have a conversion factor between pannage assessment and land taxation, which renders the application of the former as generalised expressions of landed property probable – as presupposed in JL III.55.

The expressed correlation between pannage and marks of gold led Svend Aakjær to deduce a general relationship between woodland and arable so that 1 *svins olden* equalled 1 *skæppe* of arable.[217] Erik Arup adopted this interpretation,[218] yet to generalise on the basis of this unique and presumably local relation appears totally untenable. A corresponding unit, a *vrad*, is known only from manuscripts of *Skånske Lov*, according to which twelve horses corresponds to one *stod*, twelve oxen to one *hjord* and twelve swine to one *vrad*.[219]

As was the case with manorial *enemærker*, the size of peasant woodlots was frequently assessed according to their pannage capacity. So from the period 1570-1659 more than two thousand such valuations were made in relation to the extensive reorganisation of the crown lands.[220] The average size of the lots in Jutland and the islands was *c.* 25 'swine' ($\sum$=1796), whereas the corresponding figure in Skåne was 46 ($\sum$=490).

In contrast to these examples, the use rights were frequently determined solely as the freedom to feed the farm's own swine on the mast. The wording in letters of privilege or title deeds is to 'free' pigs.[221] Sometimes, the verb 'free' was also em-

214. Repertorium Diplomaticum regni Danici Mediaevalis II, no. 724 (30.4.1457).
215. Århus Domkapitels Jordebog 1313, p. 20: 'Silua modica in qua impiguari possunt •XL• porci quando erit pastura'.
216. Århus Domkapitels Jordebog 1313, p. 25: 'Hic habet mensa • centum viginti octo swinslagh in terris • que equipollent viij • marchis auri • xvj • swinslagh pro marcha auri • computatis'.
217. Kong Valdemars Jordebog I, pp. *112 f.
218. E. Arup 1925, p. 217.
219. Danmarks Gamle Landskabslove 1, p. 136: 'Tolf hors gøræ stoþ, ok tolf nøt hiorþ, ok tolf suin uraþ'.
220. Rigsarkivet, Danske Kancelli B 94.
221. E.g. Repertorium Diplomaticum regni Danici Mediaevalis II no. 2545 (18.1.1469), no. 3194 (27.1.1473), no. 7349 (21.1.1493), no. 7716 (21.8.1494), 7931 (25.6.1495).

ployed in connection with quantified pannage rights (e. g. 'free one hundred swine'),[222] and it appears roughly to have signified use rights in general.[223]

On rare occasions, pannage assessments distinguish as to whether the mast originated from oak or beech trees. This was the case when the forest boundaries of five villages on Zealand were perambulated in 1458.[224] The provincial court decided that whereas all participants could 'free' their own swine when the oak bore fruit, only three of the villages should enjoy this right when the beech was bearing.

The appearance of woodlots in the landscape

A distinction was made between woods partitioned into lots (*lodskiftet skov*) on the one hand and common woods (*fællesskov*) on the other. The wording describing such woodlots is, however, changeable and, as we have seen, not unconditionally related to any physical partitioning of woods.

The Sorø Register of Donations refers *c.* 1310 to 'two wood parts called *skovlodder*',[225] and the Land Register of the Roskilde bishop has 'a *skovlod* in Brænneholt which gives 3 pounds'.[226] In Magleskov on Lolland, Gloslunde vicarage in 1488 had 'a part of the forest being two lots'.[227] And in *c.* 1200 a farmstead in Øverup (Zealand) had three lots in a wood called Bylod (*lod* = lot).[228]

Latin texts usually employ the term *pars* for *lod* thus indicating that it might sometimes refer to a geographically unspecified fraction. Among the possessions of St. Clara Abbey in Roskilde were 'parte sylvæ in Svenstrop' and 'partis sylvarum in Køgskov',[229] just as Sorø Abbey had 'unam partem silve dictam skowloooth in silva dicta Hiærnæbiærskow in Dyngsweeth'.[230] And in 1302 Peder Gjordsen handed over his part of Svenstrup Forest to St. Clara Abbey where his sister resided.[231] Also the

222. Roskildebispens Jordebog 1370, p. 23: 'liberabit omnes proprias sues'.
223. Repertorium Diplomaticum regni Danici Mediaevalis II. 7349 (21.1.1493).
224. Repertorium Diplomaticum regni Danici Mediaevalis II, no. 899 (7.11.1458).
225. Diplomatarium Danicum 2:6:222 (2.3.1310): 'duas partes siluarum dictas Skowslothe'.
226. Roskildebispens Jordebog 1370, p. 46: 'Item habet idem. vnum skowslot. in Brænneholt. de quo dat iii pund'.
227. De ældste danske Archivregistraturer V, p. 859: 'en skovsdeel, som er 2. lodder'.
228. Diplomatarium Danicum 1:3:186 (1192-1225).
229. De ældste danske Archivregistraturer V, p. 578 (1263 and 1315).
230. Diplomatarium Danicum 4:3.102 (29.9.1386).
231. Diplomatarium Danicum 2:5:195 (20.4.1302): 'omnem partem quam possedi in silua Swensthorp uidelicet Holæscogh. Køpæscogh. et Trollæwatscogh com ceteris partibus de tota silua Swensthorp ad me pertinentibus ...'.

immediate Danish equivalent to 'part', i.e. *del*, has been used to designate woodlots (p. 133).[232]

In some instances, the Danish term *skovskifter* was used.[233] *Skifte* is related to the process of land distribution; *udskiftning* being the Danish term for 'enclosure'. Finally *skovland* – literally translated 'wood-land' – was used on rare occasions.[234] In one case, two such *skogsland* were explicitly recorded to be *ornum*, i.e. land outside the general distributive system of the open field system.[235]

Few individual names of medieval woodlots are known today but they certainly reflect woodlots as physical realities. One is Krigskarlelod (The Warrior Plot) in Døjringe on Zealand, mentioned in 1347.[236] Others are fru Mæredes lod in Lindet Skov (Jutland), Mørkholt, Gretbere (the present Gritbjerg Skov), Høllitzhoffdh and Gamellhole near Hedensted (Jutland) and Skarnholm, Sviinehauge and Sviinehaugekrog all appearing in fifteenth century documents.[237]

Almost all evidence suggests that parcelling out took place on a farm level so that woods were allotted among the village tenants. This was clearly the case when a strip of woodland was indicated to be located between Christen Lund's and Sefren Mortensen's lots, neither of them being landlords.[238] There is, however, a hypothetical possibility that the allotment sometimes only affected the estate level. In those cases, each landlord represented in a village got his enclosed woodlot, the common usage of which continued among his tenants.

We have no means to assess the significance of such purely seigneurial allotments. But they clearly did exist. In 1502 the allotment of an *enemærke* in Øde Højelte belonging to a Copenhagen cleric clearly focused on the owner and not on his two tenants, and we do not know if a further subdivision between them followed.[239]

In a further example, a court certificate of 1464 regarding a grove between Sankt Clara's Wood and Abbetved Wood, recognised that two tenant farms in Kirke Såby, both belonging to the Altar of Saint Lucius in the cathedral of Roskilde, held the right to use the grove, but not the tenants of other landlords in that village.[240] But it does not show whether the grove was actually partitioned between the two tenants or if they utilised it in common.

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232. Repertorium Diplomaticum regni Danici Mediaevalis I, no. 7126 (1440): 'en Skovsdel i Magleskou'; Diplomatarium Danicum 3:4:402 (1355): 'en skouffdeel kallet Hoffuitschouff'.
233. Repertorium Diplomaticum regni Danici Mediaevalis II, no. 3433 (13.4.1474) and 4329 (1478).
234. E.g.Repertorium Diplomaticum regni Danici Mediaevalis II, no. 7630 17.4.1494).
235. Scriptores Minores II, p. 264.
236. Diplomatarium Danicum 3:2:395 (29.9.1347).
237. Repertorium Diplomaticum regni Danici Mediaevalis II, no. 384 (31.7.1454), 7893 (4.5.1495), 8991 (1499).
238. Kronens Skøder I, p. 114 (3.1.1568).
239. Repertorium Diplomaticum regni Danici Mediaevalis II, no. 9700 (8.10.1502).
240. Repertorium Diplomaticum regni Danici Mediaevalis II, no. 1746 (19.5.1464).

Roskilde Chapter's land register of 1568 informs us that 'to the mentioned Såby there are two woodlots. The one, the Såby men have and they can free their own swine in times of mast. The other, the dean has'.[241] Apparently twenty-two church tenants in Såby shared one woodlot. Yet the description might also simply record the fact that the dean's wood close was separated from a former village *fællesskov*.

Abundant post-medieval evidence testifies to the affiliation of one or more woodlots to each farm as decreed by Erik's *Sjællandske Lov*. And just as one farm would often have several woodlots, it could also participate in the common wood simultaneously with its possession of individual closes. This was, for instance, the case when a farm in Rejnstrup (Zealand) was rented out by St. Peder's Abbey in Næstved to Niels Pedersen Gris in 1423.[242] It participated in the common wood of the village as well as it holding its own closes (Bøgehaffue and Egehaffue, i.e. Beech Close and Oak Close). And in 1494 the vicarage of Købelev (Lolland) had wood both in the allotted parts of the village ('udi Kiøbeløff reffdreth') and in the common wood ('i felligskoffuen').[243]

So, even though the inhabitants of Lee (p. 150) achieved only one parcel each, the association of farms with more than one woodlot appears to have been quite normal, a fact which is also indicated by medieval evidence. The Roskilde land register of 1568 has examples of farms with two woodlots.[244] Ten years later, a property exchange assessment has it that the farm Bolbroholt had 'furthermore both four woodlots in the wood and a little grove near the farmstead'.[245]

A great number of the woodlots parcelled out during the fourteenth and fifteenth century obviously served as manorial *enemærker*. But woods pertaining to parish churches, vicarages or other clerical positions were also largely enclosed during that period. When Oluf Daa, the later bishop, was still *provst* (deacon) in Roskilde, he explicitly held Såby Skov as freely as any other official possession of his post.[246] And in many cases, vicars upheld the right to feed their own pigs in the vicarage woodlot.

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241. Roskilde Kapitels Jordebog 1568, p. 2: 'Er tiill forscr[ne] Saaby thoo skoufflodder. Thenn ene haffuer Saaby mendt wnder thennom oc kandt frii theris egne suin, naar olden er. Then anden haffuer degghen wnder seg'.
242. Repertorium Diplomaticum regni Danici Mediaevalis I, no. 6002 (2.2.1423).
243. Repertorium Diplomaticum regni Danici Mediaevalis II, no. 7754 (2.11.1494).
244. E.g. Roskilde Kapitels Jordebog 1568, p. 31 and 140.
245. Rigsarkivet, Danske Kancelli B94 3.11.1578: 'Item baade fire skouffskiffter udj skouffuen och en liden lund hoos gaarden'.
246. Repertorium Diplomaticum regni Danici Mediaevalis II, no. 280 (14.8.1453), the document has 'Sæby Skov', but from its location it must be identified as (Kirke) Såby Skov.
247. Repertorium Diplomaticum regni Danici Mediaevalis I, no. 7930 (18.11.1449), no. 7990 (3.7. 1450).

Such swine were called *lovsvin*.[247] But, apart from them, the hogs of a neighbouring peasant were sometimes allowed in the vicar's wood, entitling him to receive *oldengæld*. In the fifteenth century, the dean of Fuglse District (Lolland), however, handed over every third swine received as *oldengæld* to the church *fabrica* (building fund), so conceding the official character of the vicarage wood.[248]

The discrimination between personal and official possession was purportedly unknown to Scandinavian scholars until the thirteenth century.[249] To establish it was, however, of vital importance for the general acceptance of the church as a 'legal person' in regard to possession of landed property. In the traditional rural society of the early Middle Ages, the kin should always approve permanent transfer of landed property.[250] But when clerical institutions received donations, they were in general for eternity. So it must have been difficult for family members to appreciate that their influence was abolished in this manner.[251] The late twelfth century 'Church Laws' of Skåne and Zealand, however, both includes paragraphs on 'church woods'.[252]

During the Middle Ages, it was often monks who celebrated mass in parish churches near monastic institutions.[253] So after the reformation a number of parishes became short of ministers and new residences were needed. In order to procure a stable material basis, vicarages in woodland areas were conferred the right to free pannage for home-born swine, fire wood from windfalls and dead trees and timber to maintain their farm buildings. In a sixteenth century record we are informed that 'the minister of Ørslev has always had free pannage, pasture and wood cutting and building timber in Hannenov, Favrholt and in other places in Listrup's adjoining lands'.[254]

It was, naturally, a notable shortcoming if a parish was unable to support the vicarage with its own wood. In a seventeenth century register the minister in Skørpinge and Fårdrup complained that 'woodlots are non-existent and that is the major inconvenience in this benefice that firewood and the like causes such trouble and

248. Repertorium Diplomaticum regni Danici Mediaevalis I, no. 8049 (undated).
249. O. Fenger 2000, pp. 266 f.
250. D. Tamm 1996, pp. 63 f.
251. H. Paludan 1991, p. 64.
252. Gamle Danske Landskabslove 1, p. 831: 'kirkiu skohe' and 8, p. 448: 'kirkæ skog'.
253. V. Nielsen 1963.
254. Lolland-Falsterske herredsbøger 1 p. 53: 'presten i Ørsløff haffuer altiidtt hafftt frij oldengield, frij gresgang oc skouhug oc bygningstømmer paa Handenaa, Faureholtt oc anden sted paa Liistruppe fang'.
255. Landsarkivet for Sjælland, Flakkebjerg herreds provsti, Herredsbog 1647-1835: 'Skovfslaader ere her aldelis ingen, oc er det den störste incommoditet her udi kaldet, at mand med brendeved oc saadant lider stor besværing oc omkostning'.

expense'.[255] But in 1670 the general privilege was affirmed and, as the state of many vicarage woodlots deteriorated, ministers were gradually guaranteed the receipts of allowances from royal forests. So many ministers and clerical institutions received allowances of fuel wood and timber *pro officio* (*deputater*). In the town Kolding, the hospital, for instance, held the right to receive pannage for thirty pigs and 50 loads of fuel wood p.a. from the crown woods.[256]

In 1569 the minister's residence in a total of 105 parishes in Skåne is recorded to have access to wood.[257] 90 of these (86%) belong to the group of more or less specified rights to pannage, coppice and fuel wood, whereas specified woodlots are only mentioned in 25 cases. No clear tendencies can, however, be deduced from their geographical distribution. It could merely be noted that, of the twenty-five, ten were located in Halland, where scarcity of woodland resources in the coastal zone[258] as compared with Blekinge and northern Skåne might have induced an allotment process.

Fig. 22 shows the woodland possessions of both church tenancies and vicarages according to the 1567 Land Register of Zealand. In the first place, no recordings are made for the plain immediately south-west of Copenhagen and on the north and west coast of the island, all of which are areas commonly assumed to have only sparse woodland in the sixteenth century.[259] Secondly, to a certain degree a definition of woodland rights rather than specified parcels appears to concentrate in regions with no deficiency of wood, namely central, southern and north-eastern Zealand. In the north-west, virtually all vicarage woodland rights were on the contrary organised as woodlots – either in or outside arable areas.

The distribution of vicarage woods explicitly located in *overdrev* was naturally determined by the existence of such. No exhaustive information about the prevalence of *overdrev* by the middle of the sixteenth century exists, but based upon evidence two hundred years later it is conceivable that, aside from tree-less coastal plains, they would primarily be found in the central part of the island. So nearly all *overdrev* can, in fact, be identified from eighteenth century evidence.

The demarcation of village boundaries known from late medieval documents seems in general to have been of reiterating character, whereas the establishment of farm woodlots during the sixteenth century appears to be original. By means of the allotment, the woodland rights of each farm or landowner were geographically fixed. So as a result of allotment, the description of woodland property could now become

256. Kancelliets Brevbøger 8.1.1579.
257. Lunds Stifts Landebok 1-3.
258. C. Malmström 1939.
259. P. Rasmussen & S. Th. Andersen 1997.

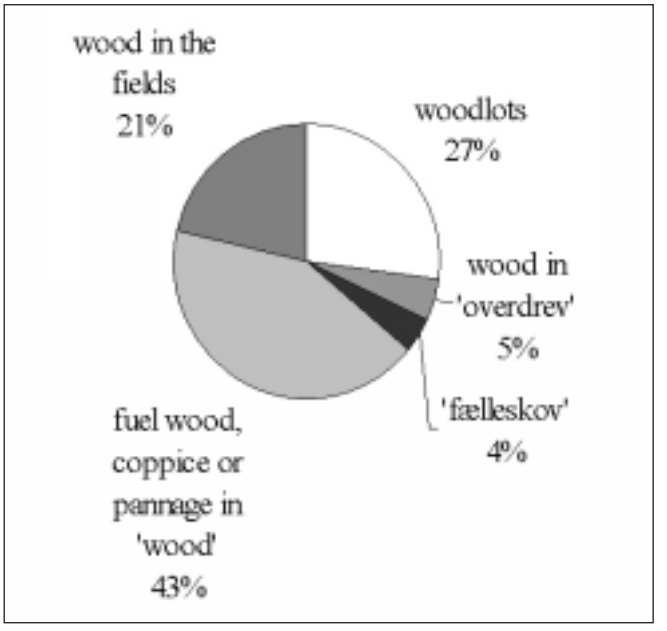

Fig. 22: *The distribution of different types of woodland rights belonging to glebe lands and church tenancies on Zealand according to the Land Register of the Diocese of Zealand 1567.*

physical: 'The church woodlot is located west of the road that leads from Fårup Lake to Jelling in between two deep creeks running towards south and south-east and conjoining south of the same wood'.[260]

Not all tenancy woods, however, were original *fællesskov* requiring a division. A substantial number were located in arable fields or meadows and were consequently already partitioned. This is the case in Skærbæk, where jurors in 1503 testified that the tenants had individual meadow lots in which there were both fens and woods,[261] and in Kongsted Borup, where the woods of Jens Nielsen in 1681 were described as 'in Krog Høj a few trees, in Skovengen there is some beech wood which is fairly extensive, in Langeng some beech stumps are found, in Hestehaven one lot has some young beech trees. In Søndermarken, Bunkehave furlong are three beech trees, in Kastegaufs furlong some young beech trees'.[262] Each of the names is identifying a particular segment of the village fields.

No exact and all-inclusive data regarding the prevalence of field woods exist.

260. Rigsarkivet, Danske Kancelli B 94 (4.4.1634): 'och er same kircheschouffschiffte beliggendis vesten for den vey, som löber fra Faarup Söe och op till Jellingh, Imellem thuende dybe becke Rende, som löber I synder och sudoust och sambles synden for same schou'.

261. Repertorium Diplomaticum regni Danici Mediaevalis II, no. 9808 (27.3.1503).

262. Rigsarkivet, Rentekammeret 333.15: 'Jens Nielsens skoufspart findes saaledis Krog Höig er nogen faa Thræer, Skouf Engen er nogen Böge Skouf paa, som er maadelig Skouf, Lang Eng findis nogen Bögestomper. I Heste Hafven findis paa én Skiffte nogle vnge Riiß böger. I Synder Marcken Buncke Hauf Skiffter findis 3 böger paa. I Kaste Gaufs skiffter nogle vnge Riis Böger'.

Records on clerical holdings from the 1560's indicate that such woods were quite common. And these are substantiated by later material. Neither of the clerical forest rolls from Zealand in 1567 and Skåne in 1569 includes positive evidence about the prevalence of field woods. But one and a half centuries later, such woods constituted 19 out of a total of 44 woods (43%) on Falster.[263]

Field woods did, of course, follow the division of those furlongs on which the trees stood. But this was not necessarily permanent. We have no positive evidence about the frequency, but it is obvious that the open field distribution of the arable was re-arranged from time to time. Recently, several authors have pleaded for an immensely variable field structure, in which redistribution appears to have been the rule rather than the exception.[264] And at least annual redistribution of the right to use meadow lots is well known from sixteenth century evidence.[265]

Legislation deals with the possibility of land redistribution, and in a number of specific cases such procedures are well established. The adjoining lands of the hamlet Løvskal in central Jutland were redistributed as late as in 1758 only thirty-two years before the final dissolution of its open field system.[266] And as with other settlements in that area, its fields were partially covered with wood.

Redistribution of land was particularly required when so-called equalisations were carried through.[267] It is, however, essential to distinguish between at least two different kinds of equalization.[268] Firstly, for fiscal reasons the main endeavour of many early modern landlords was to standardise the rents of their tenants. So, if farm sizes did not differ too much, all tenants were required to pay the same amount and composition of feudal dues. This kind of equalisation of rent had been employed by quite a number of landlords in 1662, since it appears frequently in the land register of that year.[269]

Secondly, a more comprehensive kind of equalisation presupposed an actual redistribution of natural resources in order to make the productive apparatus of all farms equal. How ordinary this thorough variant of equalisation was cannot be established. But it prevailed in the three villages Fårup, Borre and Vejerslev in central Jutland, for example. In 1662 we are told that the farms here were 'equal in seed, crop and rent'.[270] In such cases, maybe even woodlots outside the fields were re-distributed.[271]

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263. Rigsarkivet, Rentekammeret 333.18.
264. S. Hahnemann 1997; G. Thuneby 2000.
265. S. Gissel 1968, p. 59.
266. Storlandbrug under omformning, p. 307.
267. C. Rise Hansen & A. Steensberg 1951, pp. 240 f; E. Porsmose 1987, pp. 167 ff.
268. K.-E. Frandsen 1991.
269. Rigsarkivet, Rentekammeret 311.75-96.
270. Rigsarkivet, Rentekammeret 311.91-93: 'lige på sæd, avl og landgilde'.
271. E. Porsmose 1987, p. 178.

Unfortunately, no major inquiries into the causes and effects of attempts at equalisation have ever been made.[272] But the landowners clearly did not always succeed, and in at least two instances even the crown felt compelled to give in. In 1585 it conceded that attempts to equalise its tenancies in Koldinghus County had caused 'considerable disagreement, quarrel, brawl and dispute among our and the crown's servants'.[273] They were, therefore, relinquished. And ten years later the same happened in the neighbouring Haderslevhus County in Schleswig.[274] In other cases, equalisation was given up for technical reasons.[275]

272. See, however, K. Flensburg 1969.
273. Corpus Constitutionem Daniae II, no. 401 (18.5.1585): 'møgen uenighed, kif, klammer och trette eblant vore och kronens tiennere'.
274. Corpus Constitutionem Daniae III, no. 217 (17.10.1605).
275. C. Rise Hansen 1963.

Chapter 11
Enemærker and freehold woods

Manorial *enemærker*

An *enemærke* can be defined as a piece of land with no formal common use, neither regarding tree cutting, haymaking nor pasture; it is, therefore, a landed property with just one possessor. Its earliest orthographic form is found in *Jyske Lov*, one of the oldest manuscripts of which has 'en mærkt' in article I.46.[1] The same article in another manuscript has *enmærct*.[2] Both forms imply a semantic affinity to 'mark' – the borders – and to 'solitary' (*ene*). So basically the term signifies an area marked out from its surroundings and possessed by one sole proprietor.[3]

Some woodland allotments concerned all kinds of natural resources and did, accordingly, result in the establishment of *enemærker*. This was most evidently the case when the manors of noble or royal estates withdrew their lands from customary village commonage. In a legal case from 1598, the noble widow Elsebe Svave of Gjorslev claimed to hold the grove Skæppelund in Magleby as an *enemærke* whereas Eske Bilde declared that it belonged to an *overdrev* in which his tenants in Strøby took part. [4] The court, however, concluded that Skæppelund was located in the arable fields of Magleby, where Gjorslev was the sole landlord apart from the vicar. The tenants of Strøby quite correctly did take part in the pasture every third year, as one of their fields was inter-commoning with Magleby.[5] Yet, in order for Elsebe Svave to consider Skæppelund as an *enemærke*, she had to exclude the minister from that part of the village field by redistributing their respective strips.

We here witness the mutable character of the concept. *Enemærke* status might relate to different aspects of ownership. So Hesselbjerg Ore was considered as *enemærke* but it was simultaneously conceived as the joint possession of four tenant farms.[6] In this case the wood might have been a manorial wood close in the respect

1. Danmarks Gamle Landskabslove 2, p. 106.
2. Danmarks Gamle Landskabslove 3, p. 16. The Land Register of the Chaptre of Århus *c.* 1313 (Århus domkapitels jordebøger 3) e.g. has 'enmerki' (p. 19) and 'enmærki' (p. 20-23).
3. Ordbog over det danske Sprog IV, 1922, p. 398.
4. Kongens Rettertings Domme 1695-1604, pp. 161 ff.
5. On the phenomenon '*vangelag*', see B. Fritzbøger 2000B.
6. Kronens Skøder I, p. 140 (11.9.1573).

that it had but one proprietor while it was employed by a community of peasants. Correspondingly, a land register of the Chapter in Viborg from *c.* 1530 has several examples of *jendielss skow* ('one part wood') and *jenmercki skow* (*enemærke skov*) that are simply woodlots.[7]

Medieval manors were originally incorporated in the open field system dominating the rural countryside. They simply formed the larger holdings of their respective villages. And the process of segregation necessary to establish properly enclosed manors proved to be a lengthy one.

In 1490 Ellerup Skov was divided between the owner of the manor Mullerup, Palle Andersen, and the tenants of the village Ellerup.[8] Firstly, the wood was separated in two equal parts, of which Palle Andersen should have the one. In addition, he was conferred the pond of the neighbouring hamlet Dong, the swamp Bøllemosen, the grasslands of Dong and the ponds Vllekiers and Langemose Dam. Furthermore his *enemærke* was to embrace a quarter of the peasant wood next to Brenderup and half of the forest Tingskoven. The peasant's part of Ellerup Skov remained common after this enclosure.

As the nobility decreased during the sixteenth century, its wealth and power was concentrated in fewer aristocratic families and noble culture blossomed. New ceremonial residences were established, and during this process manorial demesnes were frequently enclosed from the village open fields.[9]

The economic ideas current at the time prompted a relative increase in manorial production as opposed to the income from land rents. So *enemærker* were enlarged and a considerable number of tenants farms were laid down in a lengthy process of *Bauernlegen*. In this process, not only arable fields and grasslands but also woodland rights (whether physically defined or not) of the deserted farms were incorporated in manorial *enemærker*. And so were previous *overdrev*.[10] It is, in fact, very likely that the progress of woodland allotment was stimulated by the creation of *enemærker*.

It appears as if manorial *enemærker* were wherever possible supposed to contain a certain amount of woodland. So by the 1682 assessment, the ratio between woodland and arable *hartkorn* in Funen was manifestly higher in manors than in peasant farms.[11] Manorial *enemærker*, in other words, contained relatively more woodland resources than the rest of the countryside.

Acquiring status as a manorial *enemærke* could – but did not necessarily – protect

7. Diplomatarium Vibergense no. 269 (c. 1530); see also e.g. Viborg Landstings Skøde- og Panteprotokoller, 1633, no. 21.
8. Repertorium Diplomaticum regni Danici Mediaevalis II, no. 6742 (17.6.1490).
9. G. Olsen 1957.
10. S. Gissel 1977.
11. E. Porsmose 1987, pp. 142 f.

a wood against deforestation.[12] Supervision appears in general to have been more effectual than in peasant woods.[13] But even though the landlord held the unbounded use rights, the natural resources of the *enemærke* were still employed in a multi-functional manner. As all other kinds of woodland, *enemærke* woods were used for haymaking, pasture and propagation of game concurrently with their wood production.

Peasant resentment against the lack of common admission to this kind of forest is reflected in a late seventeenth (or early eighteenth) century poem by the vicar Jørgen Sorterup. Their immediate loss when manorial *enemærker* were fenced off from the surrounding countryside concerned both pasture and fuel: 'When locks were placed around the wood, / and peasants were shut out, / then prohibitions also said, / their bullocks to renounce. / Now, they must dig their meadow peat, / take straw from barn and stable / to burn so randomly instead, / but guess, who's harm is greater'.[14]

In general, the importance of woodland fences was minimal. But with the establishment of manorial *enemærker,* they apparently became normal. In association with the *enemærke* enclosure on the manor Basnæs in Zealand, for example, the woods were not only separated from the peasant woods but also fenced off. According to a certified copy fifty years earlier 'Sir Ove Lunge, knight on Basnæs, had made a forest boundary between the woods of Vedskølle and Basnæs Manor in accordance with the consent and advice of those who are owners in that village together with him in such a way that a dike and fence was made from Sebberupdam and down to Råspringet and the Skovmøllen which is north of the aforementioned ditch, dike and fence, that belongs to Vedskølle village in the fields with wood and arable which is called Egeskov north of the fence and the other two wood parts lying south of the aforementioned ditch, dike and fence called Eskeskov and Svinestiskov together with the forest lake and the other pond called Gamle Møllesø which lies to Basnæs Manor as a free close ...'[15] The same might have been the case with royal medieval

12. R. Sørensen 1962, pp. 136 ff.
13. B. Fritzbøger 1989B, pp. 112 ff.
14. C.f. P. C. Stenersen 1758, pp. 340 f: 'Da der blev lås for skoven sat, / og bonden blev lukt ude, / da blev der og forbuden at, / han ej må have stude: / nu tar han sværen af sin eng / og foret af sin lade. /Det brænder han så hen i flæng; / Men gæt! hvo rammer skade?'
15. Det kgl. Rettertings domme 1, p. 285: 'her Oue Lunge ritther paa Bastnes hagde giortt skoffskell emellom Wiiskylde och Bastnes gaardts skoff epther theres samtycke oc raadt, som eygere uore mett hannom y samme by, i saa maade att giordes etth diige och gierde fran Sebberopdam oc ner wedt Raaspringett oc indtill Skoffmøllen som er norden vedt for[ne] graff, diige oc gierde, som hører tiill Viidskylde by indhen y marcken mett skoff och marck, som kallis Egeskoff, nordhen wedt gierditt oc the andre 2 skoffsdeele, som ligge syndhen wedt for[ne] graff oc diige oc gierde, som kallis Egeskoff [sic] oc Swynesty skoff mett skoffsøen och then andhen søø, som kallis Gamle Mølle Søø, som ligger tiill Bastnes gaard fore ett friitt enmercke ...'.

parks. Allegedly, Vintersbølle Skov in southern Zealand had already been fenced for hunting purposes during the fourteenth century.[16]

Woodland cottages

Cottages located in the woods are known from several medieval sources.[17] But their number appears to have increased notably during the general demographic growth and formation of manorial *enemærker* during the fifteenth and sixteenth centuries.[18] In the 1680's, at least 41 settlements (single cottages or conglomerates of such) named *skovhuse* (woodland cottages) existed (and a great many more are likely to have had other kinds of names).[19] A marked concentration was found in eastern Jutland (fig. 23). In regard to the employment of natural resources, the majority of these settlements performed as *enemærker* as they were located outside the existing village communities.

Even though several *skovhuse* were inhabited by forest rangers, nothing indicates that this specific kind of woodland enclosure was designed to ease forest supervision.[20] They rather represented a threat to manorial forest ownership. In the beginning of the seventeenth century, the crown accordingly demanded the numerous *skovhuse* in northern Zealand demolished in order to protect the forest against allegedly widespread illegal cutting.[21]

Woodland cottages were founded in both *overdrev* (as particular settlements), in the marginal fringes of existing villages (thus belonging to the village community in the same manner as medieval *torper*) and in manorial *enemærker*. The eighteenth century boundary between the village Borre and the manor Frisholt contained two of these types.[22] Borre Skovhus was located in the perimeter of the village lands of Borre, whereas Frisholt Østre Skovhus belonged to the Frisholt *enemærke*. And, among the 21 of the above-mentioned 41 *skovhuse* that could instantly be located, no clear localisation preference could be decided.[23] One out of four appears to be situated on *enemærke* land.

An eighteenth century transcript of the village by-law from Græsted in northern

16. J. Theisen 1947-52.
17. E.g. Kong Valdemars Jordebog p. 23v; Repertorium Diplomaticum regni Danici Mediaevalis I, nos 3200 (25.2.1573), 3388 and 3590.
18. See e.g. E. Oksbjerg 1990.
19. H. Pedersen 1928.
20. As E. Porsmose 1987, p. 105, supposes.
21. Kancelliets Brevbøger 23.11.1601 and 4.1.1602.
22. J. Christensen 1880-81, pp. 133 ff.
23. K.-E. Frandsen 1984.

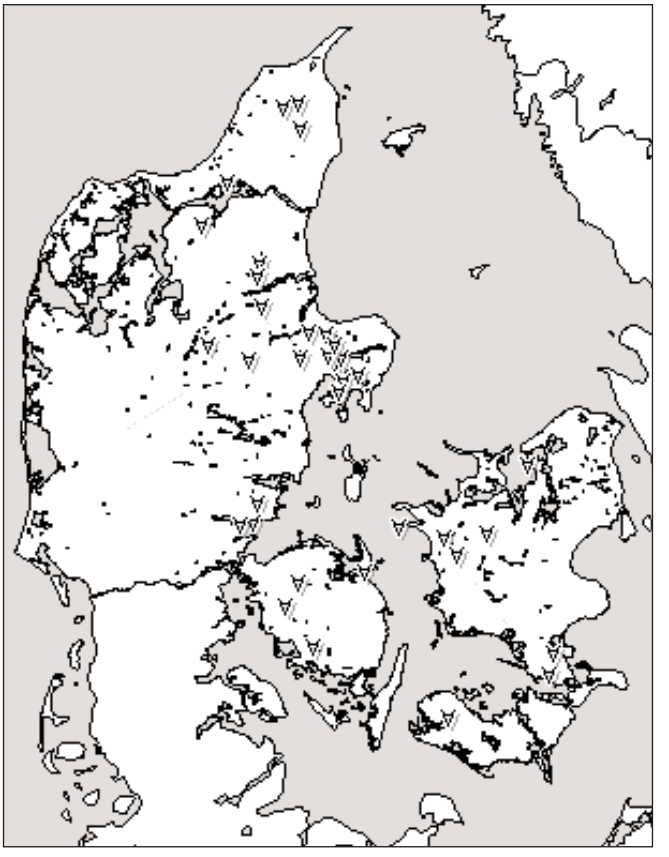

Fig. 23: The geographical distribution of known settlements called Skovhuse as recorded in the Land Register of Christian V, 1682-83.

Zealand states that 'in the cottages built here and there in the woods not only are a number of their dwellers habitually unfaithful, but thieves and villains often stay in such places. For this reason, no such cottages should be admitted'.[24] In spite of their on the whole limited extent, some major woods still functioned as sanctuaries in opposition to civilised and highly restrained rural society. In 1637 the bandit Mathias Hyp, for example, 'lived more atrociously than a heathen or a Turk with numerous whores in woodland and hiding and wherever else he could stay among the rustics'.[25]

24. Danske Vider og Vedtægter 1, p. 60 f: 'Udi i de i skoven her og der opbygte huse pleier ikke allene en del af de, dem besidder, at være utro, men andre tyve og skalke holder sig gierne til sådanne stæder. Derfor burde ingen sådanne huse at bevilges'.
25. Kancelliets Brevbøger 17.5.1637: 'levet hen argere end en hedning og tyrk med adskillige horer i skov og skjul hvor, han ellers kunne opholde sig blandt bønderne'.

The property rights of freeholders

Since the (disputed) late medieval reduction of the class, the status of freehold peasants was 'precarious'.[26] In 1764 the prominent civil servant Mogens Rosenkrantz summed up the situation in a letter to the *Rentekammer*: 'In Denmark we have three sorts of freeholders. Some who own both *herlighed* and *skyld*; they are really petty landowners just as the non-privileged, who own incomplete manors except for the fact that they pay tithe of their unfree land. The second sort comprises those who own *bondeskyld*, while another owns *herligheden*; these are obliged to perform villeinage to the owner of *herlighed* […] The third sort are those who just own their buildings and nothing more'.[27] So it was largely the payment of different kinds of rent that defined the position of the peasantry. And as the citation clearly reveals, the distinction between tenants and different freeholders followed a gradient rather than a sharp edge. Rosenkrantz's third category is clearly identical with *superficiærfæstere* (see p. 101).

Not surprisingly, then, by the middle of the sixteenth century the state of freeholders was in many respects comparable to that of crown tenants.[28] Numerous recesses and royal letters consequently decree that freeholders only be allowed to employ their woodlots according to allowances made by representatives of the crown.

As a general principle, it was first formulated in Christian II's Rural Law *c.* 1520.[29] Windfalls and trees of birch and elm were, however, exempt (§105). On several occasions, this obligatory allowance was emphasised to freeholders in specific counties or districts.[30] In addition, the Rural Law states that, even if a freeholder chooses to divide his property among the children while alive, he should himself retain 'the power over woods and fishing waters as long as he lives and is able, and he shall every year assign to the others what they should have as firewood and nothing else'.[31]

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26. T. Munck 1977, p. 61.
27. C. f. K. Rasmussen 1914, p. 130: 'I Danmark ere 3de Slags Selvejere. Nogle, som eje baade Bondeskyld og Herlighed; de ere virkelige smaa Proprietairer, ligesom uprivilegerede, der eje ukomplette Sædegaarde, undtagen at de af deres Jord, som ufrie Bondejord, svarer Tiende. Det andet Slags ere de, som selv ejer Bondeskylden, mens en anden ejer Herligheden […] Det 3de Slags ere de, der allene eje Bygningerne og ikke videre'
28. J. Steenstrup 1886-87, p. 343; E. Ulsig 1994, p. 114.
29. Den danske rigslovgivning 1513-23, no. 13, §107.
30. Corpus Constitutionem Daniae 1, no. 554 (6.11.1570), 658 (25..6.1573), 730 (7.9.1574), 589 (23.6.1592), Corpus Constitutionem Daniae 2, no. 347 (January 1584), no. 456 (24.3.1587) and no. 629. (20.11.1593), Corpus Constitutionem Daniae 3, no. 123 (23.3.1599), no. 145 (18.7.1600), no. 412, (5.2.1615).
31. Den danske rigslovgivning 1513-23, no. 13, §104: 'dog schall Faderen haffue Macht offuer Skouffuene och Fischevandtt then Stundth handt lefuer, och er thet duelig fore, och hand schall forvise the andre thet, som the schulle haffue till Ildebrandt, och inthet mere'.

A few years later, Frederik I made a comparable ruling while presiding over the Supreme Court.[32]

In 1683 *Danske Lov* outlined the distinctive attributes of freehold property rights.[33] The freeholder's right to exploit the natural resources of his farm was, for instance, restricted by consideration for his co-heirs (*samfrænder*) and the holder of *herlighed*. As within the comparable systems of *bygselrett*, *odelsrett* or *bördsrätt* developed during the early Middle Ages among the freeholders of Norway and Sweden,[34] the co-heirs held no rights to actually exploit the farm (3-12-1). As early as in 1537 a court ruling ordained that no co-heir was allowed to cut in a freehold woodlot in Ørreslev before Jep Persen, the holder of the larger share of the farm, sanctioned it.[35] But if yields according to the holder of *herlighed* and the other villagers were good, then they were entitled to a certain fee.

A freeholder was free to acquire the *herlighed* of his farm (and its wood), but the part of it concerning jurisdiction remained with the crown (5-3-27). He was also allowed to sell the property as he pleased, but his co-heirs held pre-emptive rights (5-3-1). During the eighteenth century, this was interpreted in such a way that freehold farms had to be sold at public auction.[36] If, finally, a freeholder did over-cut his woodlot, then the holder of *herlighed* was entitled to sell the farm to the co-heirs (3-12-3) – a clause adopted from the 1558 recess of Kolding (§40).[37] In 1595 the provincial court of Funen applied it in a case where some freeholders in Gudbjerg had mistreated their woodlots over a period of six years.[38]

According to all major forest ordinances, freeholders were obliged to have wood from their own lots *udvist* (requisitioned) by representatives of the crown even if no payment took place. The 1670 ordinance (§42) does not employ the exact term, but that of 1680 (and those ensuing) explicitly applies the allowances to freeholders. In 1710 the clause gets a noticeable extension as chapter 29 defining all rural landowners without a manor as freeholders in respect to alllowance of wood.

The exact course and velocity of freehold decline is still a matter of dispute among Danish historians (see p. 103). Yet it appears that heavily wooded tracts in the seventeenth century had relatively more freeholders than the rest of the country.[39]

Since freeholders exactly like crown tenants were subject to wood allowances conducted by royal forest officials, it is difficult to establish how their particular status

32. Danske Domme 1375-1662 I, no. 60 (5.11.1526).
33. T. Munck 1977, pp. 42 ff.
34. C. Winberg 1985, pp. 10 ff; M. Gelting 2000.
35. Det kgl. Rettertings Domme I, pp. 163 f (15.5.1537).
36. S. Jensen 1950, p. 16, note 3.
37. Forarbejderne til Kong Kristian V.s Danske Lov 2, no. 53, pp. 30 f.
38. Danske Domme 1375-1662 V, no. 734 (8.3.1595).
39. E. Porsmose 1987, p. 115.

affected forest management in praxis. For the sixteenth century, Erland Porsmose assumes that freeholders cut trees without allowance just as they utilised the mast without payment of *oldengæld*.[40] It appears, however, that both assumptions are wrong; or that at least they are not generally valid.

In 1593 the provincial court in Viborg heard a freeholder who without prior allowance had cut an oak in his own woodlot, since 'the wood belongs to himself and since he is entitled to sell it, then he was also allowed to cut a tree'.[41] He was later acquitted on the grounds that his wood was not ruined, but his fundamental obligation to have allowances remained unquestioned. In the following century freeholders in Silkeborg County were informed that they should let the royal ranger assess the pannage in their woodlots even though they themselves received the *oldengæld*.[42]

Normally, sale of wood received as allowances was strictly forbidden. Still exceptions did occur. Apart from his glebe lands, the minister in Pjedsted owned a freehold farm. And, even though he was compelled to await allowances from the woodlot pertaining to this farm, he was free to sell the yield.[43] Conversely, royal allowances from freehold woods to third parties also occurred.[44]

The application of the allowance system was clearly designed to provide the means for supervision and restrictions of freehold woodcutting. Still, it is impossible to determine to what extent, royal forest rangers actually restrained freehold forest usage. In a late sixteenth century case from Koldinghus County, freeholders complained that they were no longer allowed to receive wood from their own lots, which was incompatible with 'their old freedom'.[45]

In cases of evident mistreatment of freehold woods, the authorities would intervene. This was what happened when Karen Jeppes and her three sons were accused of cutting a momentous quantity of 2540 oak and beech trees in their freehold woodlot in Kattrup.[46]

Before as well as after the establishment of absolute rule in 1660, the crown claimed the privilege to make allowances to freeholders. Still under some circumstances even private estates appear to have taken this position. So in 1697 Jens Juel of Tostrup on Lolland granted allowances to six freeholders of Skørringe on their own

40. E. Porsmose 1987, p. 189.
41. Danske Domme 1375-1662 V, no. 694 (20.1.1593): 'eptherdij skouffuenn hannom sielff thilhører, och att handt er mectig thenn att motte buortt selge, thett mintte hanndt och att thett hanndt var mønndig att lade hugge ett three wdj thend'.
42. Kancelliets Brevbøger 9.10.1641.
43. Kancelliets Brevbøger 27.1.1641.
44. Kancelliets Brevbøger 18.10.1580.
45. Kancelliets Brevbøger 17.8.1590.
46. Viborg Landstings Dombøger 1616-1618, 1617B, no. 86.

fenced *enemærke* called Trætteholterne.[47] He appears to have possessed their *herlighed*.[48]

In the Baltic island of Bornholm, unusual property relations prevailed. Firstly, the settlement structure was characterised by the absence of villages.[49] All farms were single, and arable farming was organised in an infield-outfield system that employed the extensive wasteland in the central part of the island called Almindingen. By 1500, the major part of this area consisted of grass and moorland.[50]

Until the Reformation, the archbishop of Lund or the council of Lübeck but not the king reigned as sovereign on Bornholm.[51] Approximately three-quarters of the peasant farms were freeholders. And from 1536 until its sale in 1744, the great majority of the rest were crown tenants.[52]

As in the rest of country, they experienced intensified royal attempts to curb their self-determination throughout the sixteenth century. In 1499 the archbishop issued a statute prescribing forest conservation in general.[53] The freeholders, nevertheless, fought to maintain free usage of their woodlots. So in 1578 after fifty years of Lübeck sovereignty they demanded from the Danish king the right to 'enjoy free cutting and give butter to the castle in return, as they had been doing from old times'.[54] This Frederik II granted. But he did so on the express precondition that timber and fire-wood for the freeholders was allowed (as that for the tenants) but without payment.[55] Meanwhile production and transport of wood made up a considerable element of the rents and labour services paid and performed by the peasants.[56]

Property transfer

Among the theoretical outlines of property rights, the right to realise the object is a defining feature. Buying, selling and mortgaging woodland was, consequently, closely connected with individual ownership. But in general these transactions con-

47. Jens Juels Skovbog, pp. 95 f.
48. Rigsarkivet, Christian Vs Matrikel, Matrikelprotokol 1817.
49. A. Holm Rasmussen 1988.
50. V. Mikkelsen 1989.
51. H. Valsø Vensild 1988.
52. E. G. Rasmussen 1988; H. Valsø Vensild 1990.
53. Den danske rigslovgivning 1397-1513, no. 48 (6.7.1499).
54. Aktstykker til Bornholms Historie, no. 315: 'at mue fremdelis nyde frij Schouffhug, och giffuer therfore tiill slottet slig affgifft vdj smør, som the haffue giffuit aff gammell thiid'.
55. Aktstykker til Bornholms Historie, no. 315, 324, 354.
56. E. G. Rasmussen 1988, pp. 74 f.

cerned entire landed possessions and not the woods alone. Still a few cases might contribute to the description of property relations with regard to forests.

As a conspicuous parallel to Svend Tveskæg's apocryphal alienation of crown woods narrated by Saxo (see p. 74), the Swedish Erik's Chronicle relates how Danish peasants during the reign of Erik Menved (1286-1319) were forced to sell their woods in order to procure money to pay the taxes.[57] It mentions, however, nothing about the identity of the buyer or of the subsequent fate of the sold woods. But to the chronicler, such transfer of woodland was apparently conceivable.

The extensive landed property of medieval clerical institutions was created by donations. And substantial parts of the church lands consisted of forest. In 1197 archbishop Absalon bought a forest near Tvååker to enhance his donation to the monastery in Sorø.[58] According to the description, it was an *enemærke* (*silva specialis*). After this the abbey had both a part of the common wood and its own close. And in 1245 the Benedictine St. Peter's Abbey in Næstved received half the village Lille Næstved together with half of its adjacent forest.[59]

In some respects a piece of woodland could sometimes be treated as private property, whereas it remained subject to common possession in others. Most probably this was also the case with the extensive woodlands in Skåne that a later archbishop, Jens Grand, during the late thirteenth century received as mortgage from the crown. In a lengthy trial at the papal court, the king complained, for example, that 'in the forest on these lands stand an abundance of beautiful trees fitted for large buildings and ships, [but] the king had now experienced that they were destroyed by archbishop Jens, who had used them to build large vessels and houses on his and his friends' land'.[60]

A few other examples of mortgages including forest are known. So in 1420 woodland equivalent of two 'marks of silver' was mortgaged for eight shillings.[61] In most cases, woodland rights appear to have followed the farm when it was mortgaged. But when a holding in Sønder Broby in 1432 was mortgaged to a town councillor of Assens for 30 marks, it was categorically stated that he was only to utilise the wood to the extent the tenant needed it for timber, fuel and pannage.[62]

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57. K. J. Rasmussen 1988, p. 117.
58. Diplomatarium Danicum 1:3:223 (1197)
59. Diplomatarium Danicum 1:2:64 (29.11.1135, for other examples see Diplomatarium Danicum 1:2: 91 (c. 1.9.1145), 1:2:126 (1158) and 3:5:139 (before 25.7.1358).
60. Acta Processum Litium, p. 173: 'Sed cum in silvis dictarum terrarum arbores abunderant pulcre et ad edificia magna et navigia apte, et cum ad aures ipsius regis postmodum pervenisset dictas silvas dictarum terrarum per eundem dominum Johannem archiepiscopum pro magna parte esse destructas et radicitus succisas et ad naves magnas et ad domorum edificia in suis terris et amicorum suorum, sicut voluit, construenda'.
61. Repertorium Diplomaticum regni Danici Mediaevalis I, no. 5859 (21.7.1420).
62. Repertorium Diplomaticum regni Danici Mediaevalis I, no. 6584 (4.9.1432).

As was the case with other kinds of private property, woodland was also transferred by legacy. In 1376 the noble widow Margrethe Jakobsdatter conveyed the part of Ulvskov on Funen that she had inherited from her mother to the Dominican convent in Odense.[63] And in a slightly later example, a partition of a wood is simply described by inheritance terms: '*a sister's part*', i.e. half of what a male descendant received.[64] Likewise, woodland resources appear in a few medieval testaments. In 1183 the bishop of Århus on certain conditions[65] bequeathed his possessions in six villages to the Cistercian Øm Abbey 'in their woods as well as in their fields'.[66]

Normally woodlots or rights in common woods followed landed property by transfer. But property transfer could also be restricted to certain 'resource layers'. So, when Bent Bille in 1474 endowed Svend Povl Jepsen with his possessions in Vedby (apart from eventual pannage), he explicitly omitted the woods.[67] Yet in similar cases of endowment or lease, it appears to have been more common to let the wood follow the rest of the estate with a general ban against over-cutting. This was the case when some farms in Venslev and Arløsetorp in 1474 were leased from the chapter of Roskilde. The future leaseholders were notified that they should not cut excessively in the mast wood, but conserve them and neither sell nor give of them without the consent of the chapter.[68]

The primary mode of early modern real property deals was exchange. In most cases, the buying and the selling parties were both landowners so they simply interchanged parts of their property. In 1488 Laurens Thomsen and Knud Skjalmsen exchanged two farmsteads in Sonnarp and Lundum respectively.[69] With the Sonnarp farm called Østregård followed its enclosed lot in the village's oakwood, which was demarcated by the creek, Mærkesbækken.

As a basis for such exchanges, the respective values of the two sets of property in question were carefully estimated. And woodland was in many cases a notable asset.[70] Property exchanges of this kind are well known from the extensive activities of the crown during the post-Reformation century. The sixteenth century notion that landed property with woods was more valuable than other types was, however, not necessarily sustained during the following century.[71]

The assessment of woods prior to sale followed the customary appraisal of the number of swine to be fattened in a year of abounding mast, but this did not neces-

63. Diplomatarium Danicum 4:1:140 (27.12.1376).
64. Diplomatarium Danicum 4:4:221 (26.5.1390): 'in Tofteskow een søsterdeel'.
65. B. P. McGuire 1976, p. 44.
66. Testamenter fra Danmarks Middelalder no. 1 (27.8.1183): 'tam in silvis quam in agris'.
67. Repertorium Diplomaticum regni Danici Mediaevalis II, no. 3474 (11.6.1474).
68. Repertorium Diplomaticum regni Danici Mediaevalis II, no. 3475 (13.6.1474).
69. Repertorium Diplomaticum regni Danici Mediaevalis II, no. 6278 (6-12.6.1488).
70. S. Gissel 1968, p. 239.
71. B. Fritzbøger 1989B, pp. 76 f.

sarily reflect the real value of the wood. Just because pannage was employed as a basis of woodland assessment, this specific natural resource was not inevitably the most significant either to landlord or to rural society.[72] We have to distinguish between its utility value and its exchange value.

One such exchange of real property took place in 1604.[73] In a protracted attempt to establish total dominance on the island of Falster, the crown desired to take over the estate of Skørringegård with both *enemærke* and 94 tenants from its noble owner, Henrik Gøye. In return he was to have Turebygård on Zealand together with its somewhat more dispersed 136 tenancies. The two assemblies of property were assessed to be worth 1446 and 1388 *tønder hartkorn* respectively, approximately 6 % of which was represented by the woods. Yet in Turebyholm only half of the woodland assessment originated from the *enemærke*, whereas the similar fraction was *c.* 61% in Skørringegård. So in the eyes of the crown the exchange bestowed a greater relative import on the *enemærke* woods, woods that were, obviously, more easily supervised than tenant woodlots.

Not only individually owned forests but also the rights to participate in wood commons could be transferred – even separately from the farm with which they were associated.[74] And even specific forests rights were subjected to trade. During the sixteenth century wave of property transfer, crown rights to freehold forests were frequently exchanged.[75] And in some cases, the crown maintained certain forest rights for its previous tenants after sale of crown lands.[76]

Apart from actual barter, legal claims for the restitution (vindication) or denial (extinction) of property were yet another mode of property transfer (or non-transfer).[77] An example of the former was when the crown (Mariager Abbey) procured a tenant farm from the noble lady Eline Gøye. In her land register she notes that 'this aforementioned farm in Tårup was won from me in a trial and was deemed to belong to Mariager Abbey'.[78] And it was an example of the latter when the prescriptive rights of Niels Skinkel to some woodlots in Funen in 1590 was acknowledged on the basis of old documents.[79]

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72. As also stressed by C. Gandil 1937, p. 282.
73. Kronens Skøder I, p. 282 f; the complete woodland assessments of Turebygård are not recorded here, but were instead found in the original exchange appraisal in Rigsarkivet, Danske Kancelli B 94, 1.10.1604.
74. P. Holm 1988, p. 92.
75. Kronens Skøder I *passim*.
76. K. C. Rockstroh 1925, pp. 30 ff.
77. E.g. Rigsarkivet, Rettertingsdombøger 10.5.1541, 18.6.1542, 30.5.1546, 11.6.1551, 3.7.1553, 8.2. 1556, 13.2.1556.
78. Fru Eline Gøyes Jordebog p. 47: 'Thenne forskreffne gaard y Torrup bleff mig fra wunden med rettergang oc bleff dømdt till Mariagger closter'.
79. Danske Domme 1375-1662 IV, no. 516 (2.7.1584).

Chapter 12
Overwood vs. underwood

Woodland resources

Partition of woodland use rights was not only made in terms of general quantity or, in the case of allotment, of acreage. Differentiation of ownership also applied to the variety of woodland resources. This meant that different people could possess qualitatively but not geographically distinct parts of the same forest.

In medieval manuscripts a diversity of concepts similar to that known from the rest of Europe (see pp. 52 ff) reflects this variety of natural resources. First and foremost, a discrimination was made between pasture, pannage and cutting.[1] Most forests served as a (in many cases even the primary) nutritional basis of animal husbandry concurrently with their wood production.[2] As hospitable wildlife habitats, woods were furthermore used for hunting, and the thirteenth century provincial laws hold several articles on the subject.[3] More specifically, they deal with the apprehension of noble birds like falcons and hawks. Finally, a number of clauses concern beekeeping and the catching of wild swarms.[4] Unfortunately, our knowledge about the employment of these latter resources is with few exceptions restricted to the information contained in normative legal sources.[5]

Wood – the main resource of modern forestry – could itself have various forms, sizes and applications. The fundamental distinction was between fuel wood and timber. The first appears as *ligna cremabilia*[6]('fire wood') or *calefactura dicta ildebrandt* ('heating called *ildebrand*').[7] The latter is sometimes named *wognshwgh* ('carriage timber')[8] or *husse hygnyngh* ('building timber').[9] A more unusual designation

1. E.g. Repertorium Diplomaticum regni Danici Mediaevalis II, no. 3214 (28.3.1473).
2. B. Jakobsen 1973.
3. A. Hoff 1997, p. 267 ff, e.g. SkL 201 ff.
4. JL III.40, SkL 196 ff.
5. On bee-keeping during the early modern period, see E. Husberg 1994.
6. Diplomatarium Danicum 2:5:144. (21.1.1301).
7. Repertorium Diplomaticum regni Danici Mediaevalis I, no. 5985 (18.10.1422).
8. Repertorium Diplomaticum regni Danici Mediaevalis II, no. 7356 (30.1.1493) and 8642 (15.9. 1498?).
9. Repertorium Diplomaticum regni Danici Mediaevalis I, no. 7638 (18[?].11.1446).

was the inexplicable *homelbroth* or *hommel-brød*.[10] This might refer to the poles used for the fixation of hop-bines.

One specific distinction was however pivotal: the division into overwood and underwood well known from other parts of Europe, where it is reflected in, among other things, thirteenth century documents.[11] This fundamental distinction, which was to shape woodland management throughout the entire pre-capitalist period, implied a social segregation of forest resources. The very concept 'overwood' signified a special relation to the feudal landlords, while 'underwood' was exploitable for their tenants. So even if tree sizes did matter in various definitions of the two concepts, they basically referred to social strata rather than to multi-storey forests.

Almindinger, *overdrev* and *fællesskove* were all horizontal commons in the sense that the totality or parts of their resources was employed jointly by everyone or by the members of a well defined community. Still, within these horizontal commons as well as in individual woodlots, the vertical common ownership of lord and tenant expressed by the overwood/underwood division could prevail concurrently. So in many cases the two dimensions of common woodland property rights co-existed.

The earliest Danish example of the subsequently widespread discrimination between overwood and underwood is found – without the exact terms being employed – in the Book of Gifts pertaining to Sorø Abbey.[12] In the woods belonging to the aforementioned Tvååker in Halland, a distinction is made between the trees on the basis of their ability to bear fruits or not.[13] The trees were all located in the village meadows but whereas the peasants could use the non-fruit trees freely, the fruit trees were to belong solely to the abbey. The whole idea of acquiring landed property in Halland was to guarantee wood supplies. And even if the term 'fruitful trees' is not altogether straightforward, it most likely incorporated oak and beech, i.e. the major standard trees.

Later in the thirteenth century, the same distinction appears in a royal diploma for the town of Svendborg on Funen. In 1287 the burgers were granted the right to utilise *underwood* and windfalls (but nothing else) on the little island Thurø.[14] And an early fourteenth century document clearly introduces the *mortbois* known also, for example, from France and Sweden. It deals with 'fuelwood of "*Uwith*" and use-

10. Repertorium Diplomaticum regni Danici Mediaevalis II, no. 3323 and 3324. (23-24.10.1473).
11. S. Epperlein 1993, pp. 19, 46.
12. K. Hørby 1988.
13. Diplomatarium Danicum 1:4:67 (1202-1223): 'ligna non ferentia fructum' and 'ligno vero [...] fructum ferentia'.
14. Diplomatarium Danicum 2:3:262 (29.9.1287): 'ligna non fructifera et ligna iacentia, quæ uulgariter vyndf<y>llæ appellantur'.

less and windfall branches'.[15] Notwithstanding, that '*Uwith*' appears to be used toponymically, it must originally have indicated the opposite of timber-tree (with/ved).[16]

Two hundred years later, discrimination was made between 'small' and 'large' wood that was evidently synonymous with under- and overwood.[17] And when four partners in 1480 concluded an agreement about the future use of their common wood, it was specifically oak and beech that were only to be cut with their mutual consent.[18] Finally, Christian III in 1537 confirmed the peasant rights to utilise the *alminding* of Ingelstad District in Skåne. However, he emphasised that they could have 'free, common cutting of alder and thorn but so that beech and oak wood remains untouched in order that it will not be ruined to the detriment of us and the crown'.[19]

This essential division of woodland resources appears, then, to have been formulated for the first time during the thirteenth century – though this could, in fact, have taken place even earlier. It appears that its employment as a general legal condition was amplified during the late Middle Ages. If this was the case, it provides a most feasible reflection of the emergence of the new social structure which was totally to dominate rural society during the following centuries: the tenancy.

Even if no direct causal relation between the two provisions existed, it is notable that the tenant right to coppice and shrub corresponded to the obligation to participate in the fencing of the arable according to the holding's size, expressed in the provincial laws.[20] Since the fences must primarily have consisted of vertical poles and wattle or bundles of branches and twigs,[21] this was probably the reason why two Sorø documents single out cutting of 'wicker' (*sepilium*) and 'branches' (*succisione lignorum*) as particular kinds of forest use.[22]

An undated edition of the municipal statute of the town of Ribe, known as Erik Klipping's *Landbirkeret* (Rural Law)(but also related to the statute of Malmø), pro-

15. Diplomatarium Danicum 2:5:144 (21.1.1301): 'ligna cremabilia de Uwith et lignis inutilibus et caducis'.
16. J. Steenstrup 1874, p. 82.
17. The village by-law of Allesø (Funen) *c.* 1500, Danske Vider og Vedtægter 5, p. 36.
18. Repertorium Diplomaticum regni Danici Mediaevalis I, no. 4741 (no date, 1480).
19. Det Kgl. Rettertings Domme I, p. 401 (28.9.1537): ' etth friitt almyndiig skoffhug metth elleskoff oc thiørne, dog att the bliiffue bøgeskoff oc eygeskoff wbeuareth, att then icke ødelegges os oc kronen tiill brøst oc skade'.
20. E.g. JL III.58.
21. A. Hoff 1997, pp. 190 ff, 267.
22. Liber Donationum Monasterii Sorensem, p. 502, 509.

duces the first example of generalised normative regulation of overwood.[23] It determines that illegal cutting of oak or beech should be sentenced to a fine of one barrel of beer and in this way legally singles out the two species from other kinds of trees.

With an addition unknown to the Ribe Statute, article 45 states that 'about the cutting of green beech. *Item*, if any of the members of the court district are found to chop green beech or oak in a free wood close against the interdiction of their lordship, then they [i. e. the landlords] are empowered to take from him as much as a barrel of beer, if he will not compliantly receive their reproof, and pay 3 marks. If he is found once more, he shall pay 6 marks, but if he is found a third time he should pay 9 marks. Item, if any of the members of the court district is discovered selling oak or beech from wood closes to merchants or farmers, they should the first time pay 15 marks to their lord and, if he is found a second time, he should pay 30 marks to his lordship, but if he is met a third time, then he has lost his tenancy from his lordship, because it is a theft to do so'.[24]

During the fifteenth century, a series of regional statutes regulated vertical wood commons as delineated by Erik Klipping's *landbirkeret*. Shortly after severe peasant uprisings, the landlords on the island of Lolland issued a regional statute in 1446.[25] In its general ban against cutting trees in woods belonging to others, it specifically emphasises *enemærker* and 'oak wood that the peasant has raised in his field or meadow or wood preserves which have been raised and conserved by the owner'.[26]

Initially, restrictions in the woodland management of peasants were, however, restricted to trade with oak and beech trees: 'no man's tenant – the king's, the church's or the knighthood's or to whoever he belongs – may sell, barter or give away

23. H. Matzen 1896, p. 125; P. Meyer 1949, p. 38; this edition of the City Statute is not printed in Danmarks Gamle Købstadslovgivning but appears in a supplement to P. Koefoed Ancker 1776 called 'ACCESSIO JURIUM QVORUNDAM DANIÆ MUNICIPALEM AD TOMUM IIDUM HISTORIÆ JURIS DANICI', pp. 208-21; a note asserts that 'this is the act called Malmø City Statute' ('Thette ehr denn Rett som kaldes Malmøes Bircke-Rett').
24. P. Koefoed Ancker 1776, Supplement p. 220: 'Om Grön bögh at hugge. Item om nogen Aff Birckemendene findis wdi fri Ennemercke Att hugge grönbög eller Egh Emod herschabs forbud, tha haffuer the macht i hvad de finder att tage fra hannem, saa meget som en thönde Öll er verd, om hand ey will tall i theris minde med Kierlighed, och böde III mark penge, Ithem findes hand anden tidt böde VI mark, men findes hand tredie gang i saa maader böde IX mark. Ithem findes och nogen Af Birckemendene, Att selge Kiöbmand eller Landmand Egh eller bög, Att finne Ennemercks schouff böde förste tid XV mark mod sitt Herschab, end findes hand Anden tid med samme Errinde da böde Hand XXX mark emod herschaff, Men findes hand tredie tid, that haffuer hand forbrött sin boeslodt, emod sit herschaff, fordi dett er thiuff Sagh och wehrlich gierning saa at handelle'.
25. J. Würtz Sørensen 1983, p. 109.
26. Den danske rigslovgivning 1397-1513, no. 18 (22.6.1446?): '...egieskogh, som bonden haffwer vp hegieth paa sin agher oc paa sin ængh, eller i friith taghen skogh, som i hey oc i friith ær lysth aff ægiere'.

or coppice oak or beech without the consent of his master'.[27] A slightly later statute for Funen holds a similar clause: 'whoever wants to cut oak or beech to sell on the market, it shall happen with the consent of the landlord'.[28] At its affirmation in 1492, it was further supplemented with a prohibition against charcoal burning.[29]

So by the middle of the fifteenth century, the distinction between overwood and underwood formed a significant element in tenant/landlord relations. It nevertheless appears to have been confined to commercial transactions and straightforward infringements of private woodlots. Conceivably, peasants upheld free access to utilise timber and mast trees in the woodlots of their tenancies to meet their own household needs.

This conclusion is supported by a number of specific cases. When Harebjerggård (Skåne) was sold in 1446, the rights to gather household timber (*husse hygnyngh*) and to retail coppice (*kraath* and *qwesste*) and bast for the towns followed, but neither to sell wood nor pannage.[30] Correspondingly, Karl Markmand to Harrested was prohibited to cut (and sell) wood apart from the timber and fuel wood necessary for his tenants, when he rented seven tenant farms in Kvislemark (Zealand) from St. Peter's Abbey in Næstved in 1448.[31]And fifty years later the king permitted the crown tenants of Majbølle on Lolland to use fuel wood and coppice from two local woods, whereas they were not allowed to take such wood to the market or to the beach (where it could be sold to merchant ships).[32]

Underwood – allotment or commonage?

What happened to the underwood trees when the overwood was allotted among the peasants of the village? Did the allotment apply to them as well, or did the traditional coppice management continue to be a matter of common usage? Basically, we don't know. In general, the evidence as regards underwood management is very meagre.[33] It was clearly a matter of limited noble and royal interest and it generated little paper work. But since the allotment in general appears to have taken place on

27. Den danske rigslovgivning 1397-1513, no. 18 (22.6.1446?): 'skal engiens manz wardnedh, koninghs, kirkiens eller riddherskaps eller hwem han til hører, sælie, torghføre eller borth giffwe eller styffe egh eller bøgh vthen hans hwsbondes wilie'.
28. Den danske rigslovgivning 1397-1513, no. 33 (15.9.1473): 'hwo som wil hugghe eegh eller bøøgh til thorg at føre, thet skall hawes meth iordhdrottens mynne'.
29. Den Danske Rigslovgivning 1397-1513, no. 43 (19.2.1492).
30. Repertorium Diplomaticum regni Danici Mediaevalis I, no. 7638 (18[?].11.1446).
31. Repertorium Diplomaticum regni Danici Mediaevalis I, no. 7826 (1.11.1448).
32. Repertorium Diplomaticum regni Danici Mediaevalis II, no. 8644 (18.9.1498).
33. M. Sjöbeck 1964; E. Worsøe 1979.

farm (tenant) rather than estate (landlord) level, it is most likely that the underwood followed the overwood. So we must imagine that the allotment applied to all trees no matter their size and species.

The most conclusive evidence regarding underwood property and management is found in village by-laws. And apparently the practice of allotment of the underwood following a partition of the overwood prevailed. A 1532 document unmistakably mentions farm-related lots of coppice (*styvskov*).[34] And several by-laws decree that the peasants were only allowed to cut shrub on their own ground, i.e. in their field and meadow strips or in their woodlot.[35] This basic notion of coppicing 'in one's own lot' also appears in a 1630 trial in Sokkelund District.[36]

Nevertheless, underwood managed in some kind of commonage continued to exist. Apart from banning coppice outside the individual parcels, several by-laws incorporated the regulation of coppice terms. In Kværndrup cutting after the greening of the trees was banned, and in Ryslinge coppicing was decreed to take place in the new moon.[37]

In a few cases, precepts such as these more positively concern common coppice. In Langå, agreement of coppice terms was required by the by-law of 1607.[38] But by 1689 commonage in Bjerregrav was more advanced. Here no one was allowed to cut more brushwood in the fen than his 'field part' (*jordskifte*) would permit.[39] So common employment of the village underwood was distributed in accordance with the remaining landed possession.

Finally, the Herrested by-law of 1731 might throw some additional light on the practical underwood management. Its article 7 sets out that 'in common coppice no one is allowed to cut wickers before all men have agreed [...] which should be done in the right time of year. Should anybody dare to cut fencing materials in an inappropriate time, even if it happens on their own farm lots, if it is not needed for the maintenance of the field fences, then they shall be punished by the master'.[40] Firstly,

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34. De ældste danske Archivregistraturer V, p. 1090 (1532).
35. Danske Vider og Vedtægter 1, pp, 110, 116 (Rye 1645, §6 and 66), p. 123 (Sønder Jernløse 1598, §52), pp. 132 f (Kvarmløse 1624, §22), p. 180 (Sneslev 1649, §20), p. 196 (Lille Næstved, 1572 §23), p. 416 (Kværndrup 1709, §VII), vol. 2, p. 293 (Brabrand 1725, §20), vol. 3, p. 464 (Søndersø 1718, §III.8), p. 260 (Stoense 1707, §50), vol. 4, p. 173 (Herrested 1667, §80); H. H. Jacobsen 1977, p. 72 (Elmelund 1672).
36. Sokkelund herreds tingbog 1630, no. 95.
37. Danske Vider og Vedtægter 1, pp. 416, 467.
38. Danske Vider og Vedtægter 3, p. 236.
39. Danske Vider og Vedtægter 2, pp. 173 f.
40. Danske Vider og Vedtægter 4, p. 181: 'I Fællesgierselsskov måe ingen hugge giersel, førend alle mands vedtale [...] hvilket skal ske på rette tider i foråret. Skulle ellers nogen understå sig på urette tider at hugge giersel, omendskiønt det er på deris gårds egen tilligende grund, så fremt fornødenhed icke fordrer det til at holde vangsgierderne vedlige med, da straffis de af herskabet'.

Fig. 24: *Re-drawn enclosure map from 1772 showing the settlement of Viemose of the forest-row type* (Waldhufendorf). *Here each farm had its own woodlot in the easternmost part of the village. Still only parts of each parcel have woodland sign (on average 74%), which could reflect an internal subdivision in panels relating to coppice rotation.*

we here have the concept 'common coppice' (*fællesgærdselsskov*). Secondly, we are informed that the co-ordinated usage of this underwood could actually take place upon the grounds of the individual village farms. Evidently the underwood of Herrested was located in the fields and meadows, whereas their employment did not comply with their internal borderlines but was common.

As we shall see later, common pasture on fallow and stubble fields was conceived as indispensable by seventeenth and eighteenth century peasants. Yet why did some of them ostensibly manage their underwood in common even it was located in their individual field lots? The most obvious answer lies in the way in which the brushwood was actually managed.

In many cases, coppice woods appear to have followed a cycle of cutting and subsequent conservation periods even if it can be difficult to trace in the written sources

from the period. This, at least, is the general assumption in Eiler Worsøe's still authoritative treatment of the subject in Danish.[41] Regulated underwood management in a fixed rotation and based upon a physical partition of the wood in fells is, however, well documented elsewhere in Europe.[42] And in general it appears that the introduction of conservation periods was closely connected to regulated cutting.[43]

Such periods are fairly well documented in Denmark as well. The by-law of Horne, for instance, decreed a conservation of thorny bushes and scrub for a four-year period beginning in 1559.[44] This corresponded with the traditional four-year rotation of the arable, as it was recorded some hundred and twenty years later.[45] In fact, the tendency for each farm to have more than one woodlot could reflect the rotational cycle of coppice management.

The concept *fredskov* (conserved wood) is found several times in sixteenth century documents.[46] The same applies to the prefix *hæge* (see p. 84) that in contemporary German texts appears as complementary to *schleg*, i.e. 'cutting'.[47] We find it in a number of proper names, *inter alia* in Heiget in Stokkerup Skov,[48] and in Hejdeskov, a part of Gedeskov in southern Falster.[49]

In cases where an underwood located in the *overdrev* was not allotted, its usage was sometimes legally confined to common purposes. So, according to the Sneslev by-law of 1649, such brushwood should only be used to mend the fences around the *overdrev*.[50]

Seigneurial rents derived from woodland management

Wherever woodland was included in a tenancy, the peasant would be required to pay a certain rent corresponding to his use rights. In theoretical terms, any confinement of an owner's full use rights was accompanied by a claim for compensation. In the early modern feudal relation between lord and peasant, the palpable form of this compensation was the annual rent in kind, cash or labour. And the allegation that

41. E. Worsøe 1979.
42. O. Rackham 1980, pp. 137 ff; H. Hausrath 1982, pp. 17 ff; A. Corvol 1984; H. Slotte & H. Göransson 1996.
43. K. Mantel 1980, p. 319.
44. Danske Vider og Vedtægter 5, p. 45.
45. K.-E. Frandsen 1983, p. 155.
46. E.g. Lunds Stifts Landebok 2, p. 162; Corpus Constitutionem Daniae 1, no. 644 (21.5.1573); De ældste danske Archivregistraturer II, p. 61 (1521).
47. E.g. N. Meurer 1602, pp. 4r-v; K. Mantel 1980, p. 319.
48. P. B. Grandjean 1908, p. 112.
49. B. Fritzbøger 1989C, pp. 20.
50. Danske Vider og Vedtægter 1, p. 182.

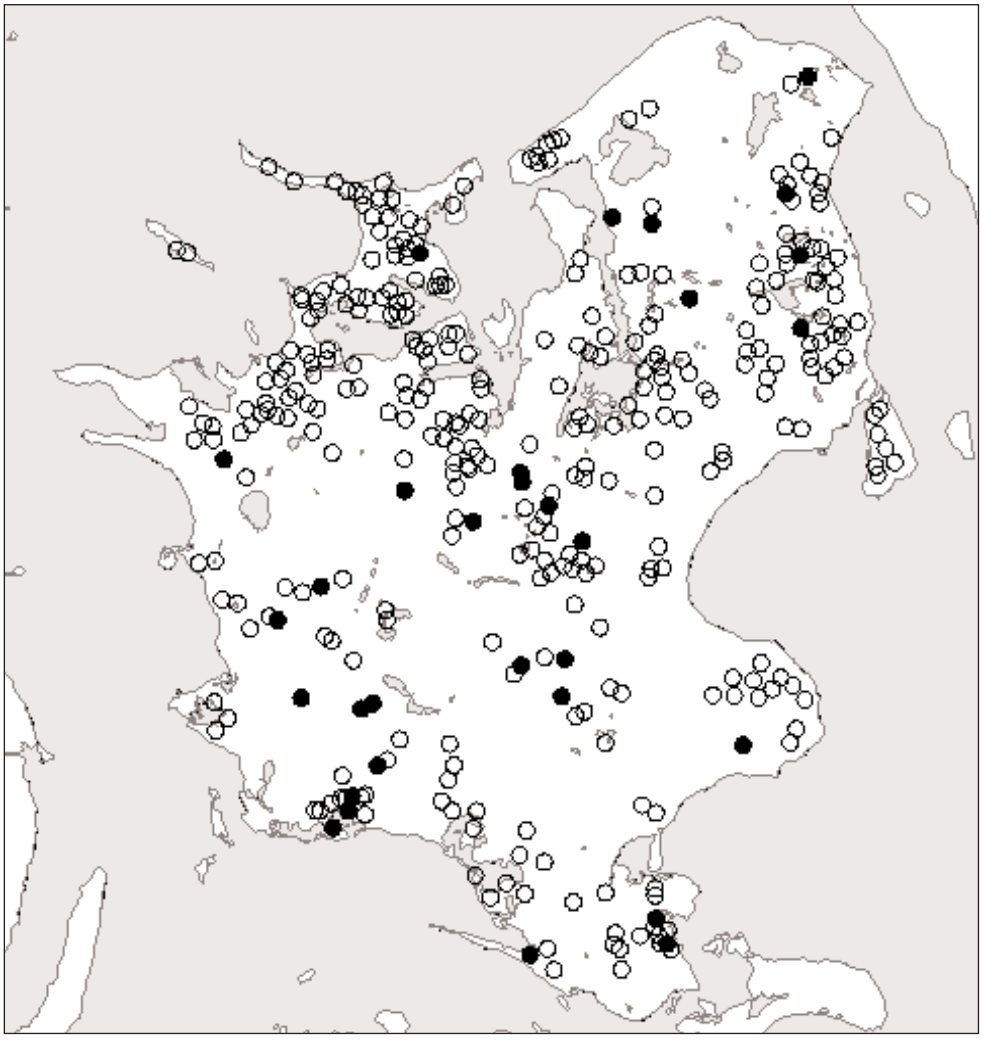

Fig. 25: *Villages on Zealand mentioned in the Land Register of the bishop of Roskilde c. 1370. The ones marked with black were registered as having woodland.*

the landlord was the proper owner of all seigneurial woods whether *enemærke* woods, tenant woodlots or un-allotted *fællesskove* gave rise to various sorts of payment. As opposed to payments for the admission to utilise the arable – so-called *skyld* – such forest rents belonged to the group of feudal dues designated as *herlighed*.

Herlighed appears in general to develop later than *skyld*, and Svend Gissel considers it 'an obvious possibility that the peasants during the late Middle Ages or maybe even before 1300 by agreement bound themselves to pay for some of the benefits

which they had previously disposed of freely [...] In return, the master to some extent guaranteed use of the benefits so that it was not infringed by others'.[51] This interpretation notably stresses the elements of reciprocity of the landlord-peasant relations. Often such rents appear not to have been paid originally by the individual tenant but by the *bol*.[52]

Pannage[53] – or to use the Danish term firstly employed in 1313 *oldengæld*[54] – was the dominant feudal rent derived from payment for woodland use. Basically, it was payment for fattening swine in the woods during the autumn months, but it applied to both fixed, annual rents and *ad hoc* payments. A fixed pannage assessment (see pp. 161 f) assigned to each farm was normally used to express the extent of woodland *herlighed*. But the content of the *herlighed* was far more diverse than just the fattening of porkers. So the abstract number of swine to be fattened in 'years of plentiful mast' simply encompassed the totality of woodland resources.

According to the Land Register of the bishop of Roskilde *c.* 1370, some peasants paid the duty while others were exempt. From the distribution of woods (fig. 25) and payment of *oldengæld*, it is firstly clear that peasant forest rights at this time were not necessarily accompanied by this kind of tax. Several of the diocese's tenants must have comprised woodland and only a minor fraction appear to have paid *herlighed* for it. Secondly, several villages recorded in the register without any notice about woodland, must have had access to it, given the distribution of the reduced woodland cover four centuries later. So in these places peasant woodland management must either have taken place without landlord control or the village woods were in the hands of other estates (and their tenants).

One illuminating example is the coastal hamlet Starreklinte on Zealand. Here, we are told, the Roskilde Bishop had landed property without any reference to woodland, whereas the Chapter of Århus half a century before, had 'a middle-sized oak wood called Starreklintlund [...] and a middle-sized aspen grove'.[55]

As must have been the case with other kinds of woodland rents, *oldengæld* was undoubtedly introduced when local wood shortage was gradually perceived as a problem. The exact date of its introduction might, therefore, vary geographically. It is notable that Sorø Abbey was arguing with neighbouring lay landlords over *old-*

51. S. Gissel 1968, p. 43 f: 'Det er en nærliggende mulighed, at bønderne i senmiddelalderen eller måske allerede før 1300 gennem overenskomst har forpligtet sig til at betale (herlighedsydelser) for nogle af de goder, de tidligere frit havde råderet over [...] Til gengæld garanterede godsherren i et vist mål brugen af herligheden, således at den ikke blev antastet fra anden side'.
52. S. Gissel 1968, p. 237.
53. K. P. Witney 1990, pp. 22 ff.
54. Liber Donationum Monasterii Sorensis, p. 516 (1313); see also Diplomatarium Danicum 3:3:587 (14.9.1352); the issue has previously been treated in B. Fritzbøger 1992, pp. 37 ff.
55. Århus Domkapitels Jordebøger III, p. 12: 'silua modica quercina que dicitur Starræklintlund [...] Et est ibi modicum populetum'. K.-E. Frandsen, Aa. H. Kampp & M. Mogensen 1975.

engæld from the forests around Lorup as early as in 1313 (p. 85). Its register of donations relates how 'the entire wood [...] remains in common, so that the rent called *oldengæld* derived from it should be divided in common in such a manner that the abbey receives one fifth of the rent and the aforementioned noblemen four fifths'.[56]

Since the payment of *oldengæld* emanated from the employment of (the fruits of) beech and oak trees, it was closely connected with the introduction of the seigneurial overwood privilege. The assumption that payment for the usage of *herlighed* is of later origin than the basic rent based upon the arable (*skyld*) could be supported by the additional character of pannage in kind (swine) in the late fifteenth century account from the Benedictine abbey of Skovkloster on Zealand.[57] Here, payments of swine – the typical form of o*ldengæld in natura* – generally appear as marginal *addenda*.

As the fructification of oak and beech trees was highly fluctuating, the pannage ought ideally to vary in proprtion to it. So in numerous cases payment of *oldengæld* was conditional on the actual production of mast. In the 1497 Cadastre of Esrom Abbey, a number of entries reflect this dependence. One tenant was expected to pay 'a fat boar, when there is mast, whether he has swine or not, many or few'.[58]

As a fixed rent, *oldengæld* in kind appears not surprisingly to have taken the form of swine. Apparently, the assessment of *oldengæld* in a village was based upon the *bol* structure (where it existed) and the payment was accordingly named *bolsvin*.[59] It could be converted to, for example, barley.

Oldensvin (or *skovsvin* or *brændsvin*) were valued only as one third of the *bolsvin*, probably since the latter was fattened for a longer period of time – and they were typically paid according to the number of swine actually branded and sent to the woods. So it is most likely that *bolsvin* corresponded with woodlots or fractions of *fællesskov* where the tenant held the right to brand his own 'native born swine', whereas *oldensvin* were paid by tenants who were entitled to fatten a specified number of swine (of the type 'pannage for 12 swine').

As the pannage capacity of most woods declined especially during the seventeenth and eighteenth centuries, customary farm-wise pannage assessments became obsolete. So most woodlots were no longer capable of fattening either all native born swine of the farm or any specified number. For this reason, exemptions from the

56. Liber Donationum Monasterii Sorensis, p. 516: 'qvod tota silva [...] taliter interius sint perpetuo communes, qvod obvenio, dicta Aldengield, inde proveniens, cedat ad communem participationem, ita duntaxat qvod Monasterium percipiat inde singulis annis qvintam partem de ipsa scilicet obventione, & prædicti Nobiles partes qvatuor'.

57. Skovklosterregnskaberne 1467-1481, 1993.

58. Codex Esromensis no. 257 (1497): 'een fedh galt, nær allen ær, hwat hæller han haffwer swin eller æy, mange eller foo'.

59. S. Gissel 1968, pp. 65 ff.

customary payment of *oldengæld* did occur.[60] Yet in general it seems to have continued even though it was supplemented by alternating payments according to the actual number of swine in the wood each year. The latter was also called *oldengæld*.[61]

The alternating *oldengæld* would typically consist of a fraction of the branded swine (or money). So the landlord received every sixth, eighth, tenth or twelfth swine (called '*tægtesvin*') as compensation for the tenant pannage, as this rent varied greatly in both time and place.[62]

Two kinds of *oldengæld* existed, therefore, side by side: annual rents and *ad hoc* payments. But the latter frequently influenced the former, so that the form and level of the 'fixed' rent did, in fact, fluctuate according to the mast production.[63] *Bolsvin* or sheep[64] could, for example, be substituted by *brændsvin* in years of great pannage. Finally, *ad hoc* payments could simply originate from leasing arrangements in which no specified woodland rights were involved, as was the case when inhabitants in western Jutland sent their swine to forests in the eastern part of the peninsula to be fattened.[65]

The employment of firewood, wattle and timber was no less vital to rural society than the fattening of swine. And from this tenants were obliged to pay certain rents as well. The first examples of payments for participation in the vertical wood common constituted by a tenant and his lord – i.e. for the utilisation of major trees – is found in the Land Register of the Bishop of Roskilde dating from *c.* 1370. Here the users of the Biskopskov forest near Ulkerup (Zealand) give half a barrel of butter.[66] In a rather exceptional payment mentioned in the same register concerning Ottestrup (Zealand), we are told that anybody who wished to sell (*sic*) wood must pay a lamb.[67] The wording is obviously rather remarkable. Either *vendere* (sell) is simply a rather unlikely slip of the pen for *accipere* (buy), or the duty applies to the right to sell to a third party. Considering the general trade restrictions of later times, this could make good sense.

From the following centuries, numerous forms of payment for use of woods are

60. Repertorium Diplomaticum regni Danici Mediaevalis II, no. 10461 (26.10.1505); Kancelliets Brevbøger 13.10.1641.
61. S. Balle 1992, p. 175.
62. C. Gandil 1937.
63. B. Fritzbøger 1992, pp. 43 f.
64. Fru Eline Gøyes Jordebog, p. 472; Rigsarkivet Danske Kancelli B 94, 7.7.1578.
65. H. K. Kristensen 1978.
66. Roskildebispens Jordebog 1370, p. 46.
67. Roskildebispens Jordebog 1370 p. 22 'qui vult vendere siluam. det agnum'.

known – *skovkøb*,[68] *skovleje*,[69] *skovtold*,[70] *skovpenge*[71] or *vedpenge*[72]. In some cases, a distinction is even made for seasonal differences – summer (*sommerkøb*) or winter (*vinterkøb*).[73] And normally the assessment of rents presupposed a quantitative measurement of the forest whether geographically fixed or not. The bishop of Roskilde's tenant in Svinninge (Zealand) accordingly paid three pounds for 'a woodlot in Brænneholt'.[74]

Based upon such measures, it was, for instance, possible to determine whether the rents were reasonable compared with the possessions from which they originated. So in 1468 the king could conclude that the *skovkøb* requested from the tenants of Selsø (Zealand) by Torben Bille's widow Cecilia was unjust.[75]

Skovkøb or *skovleje* constituted a regular component of the annual rents in woodland areas. In 1586 the peasants of southern Falster claimed to have customary rights to free fuel wood and fencing materials against annual payment of *skovleje* to the crown.[76] Hence, the license to receive wood from both overwood and underwood was associated with return of certain duties in kind or cash.

We must imagine that this payment mainly consisted of materials derived from the wood itself – fuel wood,[77] charcoal,[78] hop poles,[79] birch-brooms[80], cart wheels[81] or others.[82] But as tenant farm woodlots were no longer able to produce twenty cartloads of fuel wood a year, for example, the payment was converted to other forms such as flax, lamb, money and barley.[83] In fact, the connectivity between tenant farm and (over)woodlot was dismantled as tenants frequently received allowances from all over the estate.

Yet, in instances of forest decline, three other options existed. Firstly, payment could be reduced correspondingly, so that woodland *herlighed* and the levy based upon it were in accordance.[84] Secondly, the tenant could be forced to buy the fire-

68. Repertorium Diplomaticum regni Danici Mediaevalis II, no. 707 (21.3.1457).
69. Repertorium Diplomaticum regni Danici Mediaevalis II, no. 8629 (13.8.1498).
70. W. Christensen 1903, pp. 379, 633.
71. Skovklosterregnskaberne 1467-1481, p. 52.
72. Skovklosterregnskaberne 1467-1481, p. 94.
73. Rigsarkivet, Lensregnskaber, Korsør len, Skovregnskab 1609.
74. Roskildebispens Jordebog 1370, p. 46: 'vnum skowslot. in Bræ*n*neholt'.
75. Repertorium Diplomaticum regni Danici Mediaevalis II, no. 2443 (21.6.1468).
76. Kancelliets Brevbøger 8.10.1586.
77. Silkeborg lens jordebog 1586, pp. 3 ff.
78. Rigsarkivet, Koldinghus lens jordebog 1610.
79. Rigsarkivet, Danske kancelli B 94, 23.3.1579.
80. Rigsarkivet, Koldinghus lens jordebog 1610.
81. Silkeborg lens jordebog 1586, p. 4, 38.
82. B. Fritzbøger 1992, pp. 38 f.
83. S. Gissel 1964, p. 32; Diplomatarium Vibergense no. 342 (5.1.1549); Herlufholms Frie Skoles Regnskab 1585-86, p. 33; Kancelliets Brevbøger 17.12.1593 and 3.4.1631.
84. E.g. Kancelliets Brevbøger 3.3.1641and 30.10.1648.

wood necessary for their payment.[85] But, thirdly, payment could also be regarded as a labour service instead as a rent in kind[86]. And this latter option appears to have applied frequently. So customary rents consisting of forest products and appearing in seventeenth century land registers were by that time possibly treated as mere compulsory cartage.[87]

In addition to feudal rents in cash and in kind in return for possession of tenant woodlots, the *enemærke* woods centred round the manor formed the basis of extensive labour services (fig. 27). This was a burden that was to increase during the sixteenth and seventeenth centuries.

A fee called '*skovvogne*' – literally 'woodland carts' – might reflect a transition from rent to labour. Its actual signification is ambiguous. In the 1650's, Arent Berntsen described it as a piece of timber, 8.8 meters long.[88] Later authors, however, interpret it as cartage particularly related to the procurement of timber.[89] So the difference is one of accent. Was it the materials themselves or only their transport that constituted the *skovvogn*? To answer the question, it is edifying to consider the geographical distribution of this specific tax (fig. 26). In 1662 it was almost entirely concentrated in those parts of western Jutland that became nearly void of woods during the sixteenth century.[90] So at this time *skovvogne* must have reflected obligations of labour services.

In principle, feudal rents in kind or money remained fixed – if the productive apparatus did so. In contrast, villeinage unrestrictedly expressed the actual balance of power between lord and peasant.[91] And in some estates, labour services related to woodland management became excessive. In the royal Ringsted Abbey, cutting and sorting of wood around 1600 made up *c.* 25% of all labour services.[92] To this a cartage burden should be added which, although it cannot be estimate, must have been considerable. And a comparative level of forestry-related villeinage was found in the noble academy at Herlufsholm (fig. 27).[93]

Since early absolutism, land taxes formed the backbone of the Danish tax system.[94] The Cadastres of both 1662 and 1664 were based upon the annual rent expressed in the unit *tønder hartkorn* which was expected to reflect the production

85. Kancelliets Brevbøger 20.6.1578.
86. E.g. Kancelliets Brevbøger 27.6.1578.
87. B. Fritzbøger 1989B, pp. 70 f.
88. A. Berntsen 1656, 2nd book, p. 192 and 252; his view was adopted in B. Fritzbøger 1992, p. 39.
89. S. Aakjær 1936, p. 281; G. Knudsen 1919, p. 13; S. Gissel 1968, p. 71.
90. B. Fritzbøger 1994, p. 220.
91. W. Kula 1976, p. 47.
92. Hoveriet på Ringsted Kloster, pp. XLII ff.
93. Herlufsholm Frie Skoles Regnskab 1585-86, pp. 75 ff.
94. C. Rafner 1986.

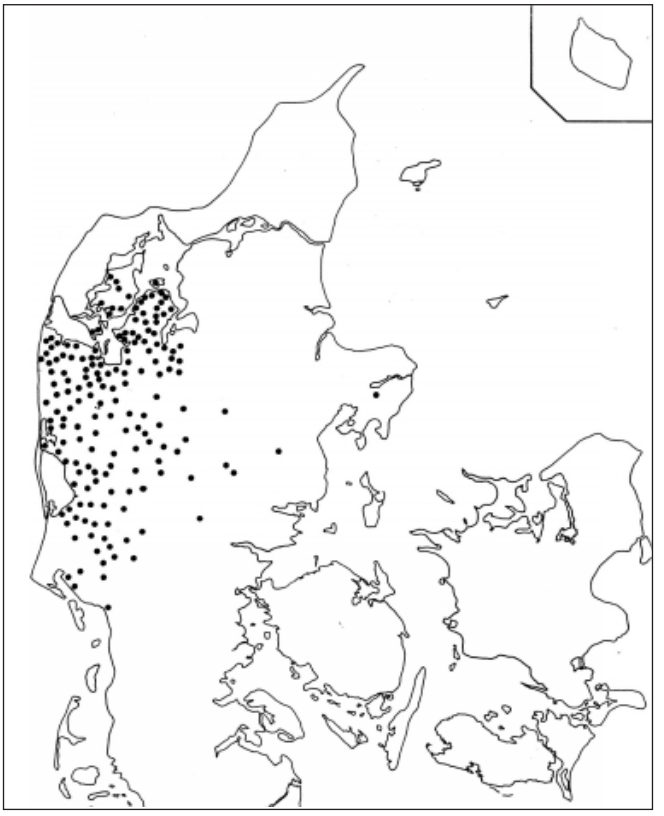

Fig. 26: *The distribution of parishes from which* skovvogne *were paid according to the Land Register 1662. After B. Fritzbøger 1994.*

capacity of each farm. And in this valuation, woodland rights expressed as pannage assessments were included. If a farm had woodlots or physically undefined woodland rights equivalent 24 swine, then this would add 1 *tønde hartkorn* to the basic tax assessment.

In 1681 a novel tax system was initiated, which was to function from 1688 until 1844.[95] The preparation consisted of a thorough computation and valuation of all arable fields, all meadows, all pastures and all forests. Again, the objective was to comprehend the individual production capacity of every individual farm in the country as precisely as possible. By the assessment of woodlots and other woodland rights, the customary gauge was applied: 'forest for 24 swine' equalled 1 *tønde hartkorn*. Yet the standards used by the 1682-83 forest assessments are highly questionable.[96] So comparisons in both time and space between such assessments should only be performed with the utmost methodological caution.

Furthermore, the woodland assessments established by 1688 appear, in general, to

95. G. Knudsen 1919.

96. B. Fritzbøger 1990B, pp. 135 ff.

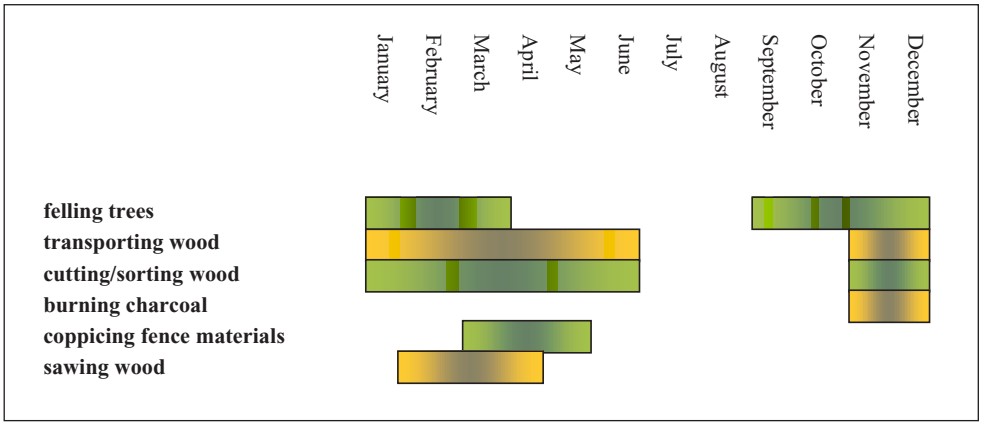

Fig. 27: *Major tasks related to woodland management among labour services provided by the tenants of the noble academy at Herlufsholm 1585-86.*

have lasted with no, or at least with only minor, corrections during most of the eighteenth century.[97] In 1751 all forests belonging to Svenstrup estate in Zealand were, for example, estimated at a level identical with that of 1682.[98]

The allowance system

The distinction between overwood and underwood formed the base of early modern forest legislation and management. And from this very distinction originated the system of seigneurial wood allowances to the tenants. As the possession of overwood was associated with ownership, tenants in need of firewood or timber were inclined to receive it as allowances from their lord. And as scarcity became an ever more imminent threat, the underwood was soon governed by the same system – without payment, though.

The idea of an allowance system to regulate the wood consumption of noble and royal tenants appears to have been adopted from Germany. It was described in detail in one of the very first theoretical treatments of forest administration, Noë Meurer's *Jagd und Forstrecht* of 1576.[99] And in 1582 it was introduced into Prussian legislation.[100] Meurer's reception in Denmark is unknown as is that of other European treatises. But its second edition of 1602 (with scattered underlining) is represented in the Royal Library in Copenhagen.

97. E. Mørup 1880; B. Friztbøger 1990B, p. 139.
98. F. Heide 1921, pp. 34 ff.
99. A. Hauser 1966; K. Mantel 1980.
100. F. Mager 1960, p. 221.

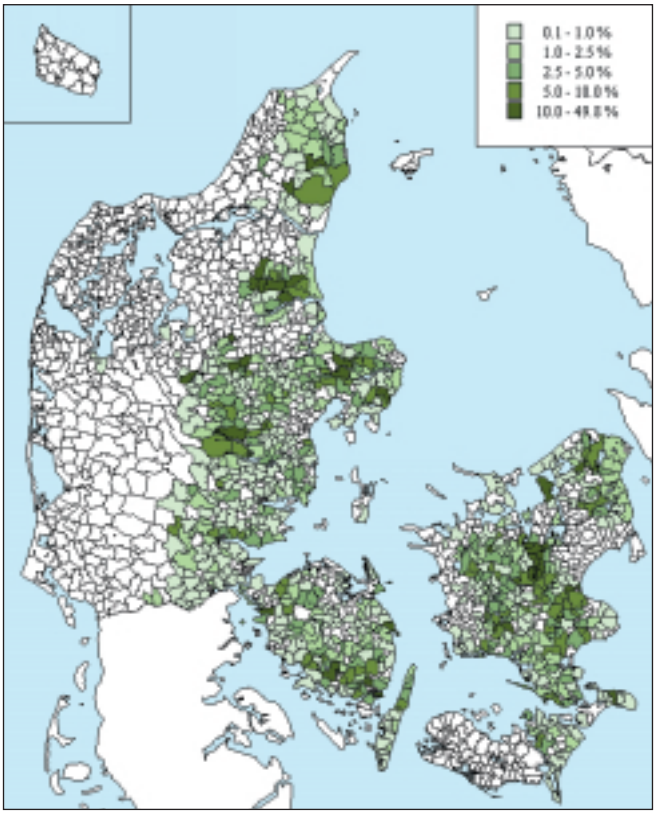

Fig. 28: *The relative weight of forest resources at parish level in the hartkorn serving as basis for land taxation 1688-1844. Since assessments were often corrupted, this evidence does not unequivocally reflect the distribution of woodland. The map is based upon a twentieth-century excerpt of the land register.*[101] *No data were available from Lolland and Havreballegård County in eastern Jutland.*

The outlines of a royal allowance procedure very similar to Meurer's, is described in the 1670 ordinance. According to this, peasant rights rested upon the observance of its paragraph on annual pruning of twenty young forest trees (§38). Specific timber needs should be reported to the forest rangers before 1 July. A complete list of allowances would then be produced by 1 September, after which ledgers on the trees to be cut and the recipients of fuel wood and timber should be completed and distributed among the peasants in less than two weeks. So by 12 September the marking and felling of trees could commence. The whole process should be completed six months later, and if someone had not collected his wood by then it was forfeited. It was a fundamental observation of all legislation on fuel wood and timber allowances that 'no fructiferous trees shall be provided as long as decayed and dry trees are available'.[102]

101. Rigsarkivet, Håndskriftsamlingen, V.H.8.
102. Dansk skovbrug 1710-33, 1710 ordinance, §12: p. 41: 'ingen Frugtbærende trær udvises/ saalenge forfornede og tophallende Træer ere for Haanden'.

In general, the principles of fuel and timber allowance were initially introduced on crown lands. In 1593 cutting of oak trees in the royal woods of Blekinge without prior allowance by the county governor was banned.[103] Yet pine, alder and birch could be cut freely even for sale. In less richly wooded tracts, the facility to find wood for allowance was, of course, restricted. In Dragsholm County royal tenants were only to receive small-sized timber for wheels and carriages, whereas their fuel had to consist of peat or whatever they were able to buy.[104] In her dowry, the crown lands of Lolland and Falster, queen Sophie made allowances around 1600.[105] From the late sixteenth century, numerous royal letters deal with this topic.[106] And on several occasions, ledgers containing wood allowances are mentioned in contemporary court registries.[107]

The duties connected with allowance of wood took up a considerable part of the time of royal forest officials.[108] And they were not even restricted to crown lands. The 1670 ordinance also commanded the rangers to carry out the allowance procedure in woods owned by various clerical institutions and those vicarages to which the crown held the patronage. Furthermore, the fact that crown tenancies established in order to maintain military companies – the so-called *ryttergårde* (horseman farms) – were also subject to compulsory allowance was stressed by a particular statute of 16 November 1670.[109]

After the church Reformation, the royal county governor was obliged to supervise woods in glebe lands,[110] and with a 1583 decree the power to assign windfall and other wood from the church forests of *Funen* was unmistakably placed with the royal county governor.[111] This was further elucidated two years later, when an open letter declared that royal administrators should 'let the vicars [...] receive, enjoy and keep from the woods pertaining to their vicarages free pannage for their own hogs and necessary fuel wood [...] but if any timber is to be cut in the aforementioned

103. Corpus Constitutionem Daniae 2, no. 622 (7.7.1593).
104. Corpus Constitutionem Daniae 6, no. 410 (9.8.1660).
105. M. Mackeprang 1900-02, p. 544.
106. E.g. Kancelliets Brevbøger 24.3.1557, 14.3.1564, 19.12.1570, 21.5.1573, 3.3.1574, 25.3.1574, 11.3.1581, 6.10.1582, 15.11.1582, 22.5.1584, 4.4.1589 and 14.10.1600.
107. E.g. Sokkelund herreds tingbøger 1621-22, 1625-28, p. 244 (1.3.1627).
108. The most comprehensive description of the allowance system in praxis is found in B. Fritzbøger 1989B.
109. Chronologisk Samling, p. 13.
110. Danske Kirkelove 1, p. 200 (1542).
111. Corpus Constitutionem Daniae 2, no. 340 (17.9.1583).

woods then it should be with the cognisance of our county governors who should assign it so that it be applied for vicarage buildings and no other use'.[112]

The key social distinction between the lord's overwood and the tenant's underskov also expressed certain reciprocities in the feudal relationship of lord and peasant.[113] *Danske Lov* puts it that 'if the lord deprives any peasant of wood, arable, meadow, pasture, peat-cutting or the like that the peasant has in tenure and use and for which he pays seigneurial rents, then the lord shall reduce the rents fairly [...] but if the lord provides the peasant with peat-cutting and coppice [...] then he needs not reduce any rent' (3-13-12).[114] So by the late seventeenth century allowances of fuel and fencing materials were considered as recompense for the seigneurial claim on the overwood.

By the sixteenth and early seventeenth centuries, crown tenants experienced excessive interference in their underwood management. In Silkeborg County, coppice woods were declared 'in peace' in order to counteract alleged over-cutting – as they were in the Schleswig County of Haderslevhus.[115] In Koldinghus County in southern *Jutland*, mandatory allowances were simply extended to the underwood.[116] A little later the royal tenants of Dragsholm County not only lost their free access to cut underwood but even to dig peat.[117]

All absolutist forest ordinances on this matter are also perfectly clear. The instruction of 1663 for the *Overforstmeister* of Zealand assumes his participation in the procedure of allowing crown tenants wicker in spring and fuel wood and timber in autumn.[118] The subsequent ordinance of 1665 mentions certified notes on the allowance of fencing materials. And its successor of 1687 includes explicit paragraphs on allowance of underwood products to crown tenants.

In the summer of 1660, i.e. at the revolutionary parliament in Copenhagen, an attempt had even been made to extend the system of overwood allowances to all private manors.[119] No traces of the resolution is, however, to be found in forest ordi-

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112. Corpus Constitutionem Daniae 2, no. 409 (22.8.1585): ' de lade presterne […]bekomme, niude och beholde af hvis skoufve, som ere liggendis til deris prestegaarde, fri olden til deris egne svin och fri nottørftig ildebrant af samme skoufve efter […]dog dersom paa samme skoufve skulle huggis nogit bygningstømmer, skulle det skei med vore lensmends vidskab, och de det lade udvise, at de kunde vide det til prestegaardens bygning och ingen anden brug at forvendis'.
113. See also H. H. Appel 1999, pp. 299 ff.
114. 'Dersom Husbonden tager fra nogen Bonde Skov / Ager / Eng / Græsgang / Tørveskær / eller deslige / som bonden i Fæste og Brug haver og giver Landgielde af / da skal Husbonden korte det efter Billighed i Bondens Landgielde [...]Dog hvis Husbonden hannem Tørveskær og Gierdsel [...]udviser/da bør ej Husbonden hannem derfor noget at afkorte'.
115. Corpus Constitutionem Daniae 3, no. 291 (30.8.1608) and 2, no. 350 (15.2.1584).
116. Corpus Constitutionem Daniae 2, no. 333 (7.6.1583).
117. Corpus Constitutionem Daniae 3, no. 463 (2.7.1617), repeated in 5, no. 3 (February 1651).
118. Rigsarkivet, Rentekammeret 212.7, no. 960 (24.11.1663).
119. Forarbejderne til Kong Kristian V.s Danske Lov II, 1893-94, no. 53, pp. 37 f.

nances, but in the *Danske Lov* of 1683 it unquestionably forms the basis for paragraph 3-13-21: 'No peasant is permitted to cut anything in the woodlot, garden or fence of his farm other than what he is allowed by his landlord [...] the same applies to peat-cutting and coppice'.[120] So from this point onwards the system of allowance was in principle universal.

In general, participation in the use of common natural resources was conditional on landed possession.[121] Cottagers and the land-less had, therefore, no formal access to the woods. Still they appear to have been granted some admission. As phrased by Fridlev Skrubbeltrang, 'in the woods cottagers as farmers could count on some requisition of fuel wood'.[122] Legislation was completely silent on the matter.

During the nineteenth century, the lower classes of rural society were often granted a limited right to glean sticks (*sankebrænde*) on the forest floor.[123] This institution, however, appears only rarely in seventeenth century documents. One example is a petition from the inhabitants of Ønslev (Falster) to continue to enjoy the concession to collect fuel wood in their fields and meadows without harming the wood.[124] Collection of fuel is further mentioned in the late seventeenth century by-law of Græsted (§84), but it is undecided if the fuel in question was, in fact, cow pats, as was the case in the closely related *Rostgårds Skrå*.[125]

As a general feature, the right for the poor to gather sticks was hardly an old one. As late as in 1797, C.D.F. Reventlow suggests as a reform that they should enjoy this right.[126] And at the same time small-holders under Sorø Academy were granted the right to collect minor fuel wood in the forest each Tuesday and Friday.[127]

The realities of forest allowances are almost exclusively known from crown lands. Even here no conclusive investigation of fluctuating wood production, changing allowance practices and regional differences has been carried out. Furthermore, the only existing empirical analysis of the royal allowance system concerns the dowry of the queen mother and not the crown lands proper.[128]

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120. 'Ingen Bonde maa hugge i sin Gaards tilliggendis Skovspart / eller Have og Lykke / uden hvis hannem af hans Husbond bliver udvist [...] I ligemaade forholdis med Tørveskær og Gierdsel.'
121. P. Meyer 1949, pp. 148 ff; B. Løgstrup 1986.
122. F. Skrubbeltrang 1940, p. 225: 'I Skovene kunde Husmænd ligesom Gaardmænd regne med nogen brændselsudvisning'.
123. P. E. Müller & S. Thalbitzer 1881, pp. 254 ff.
124. Rigsarkivet, Partikulærkammeret, Dronning Sophie Amalie 5, 16.9.1672; another example *idem* 30.5.1674.
125. Danske Vider og Vedtægter 1, p. 59.
126. Reisebemerkungen 1797, p. 67.
127. Rigsarkivet, Rtk. 3322.337.
128. B. Fritzbøger 1989B.

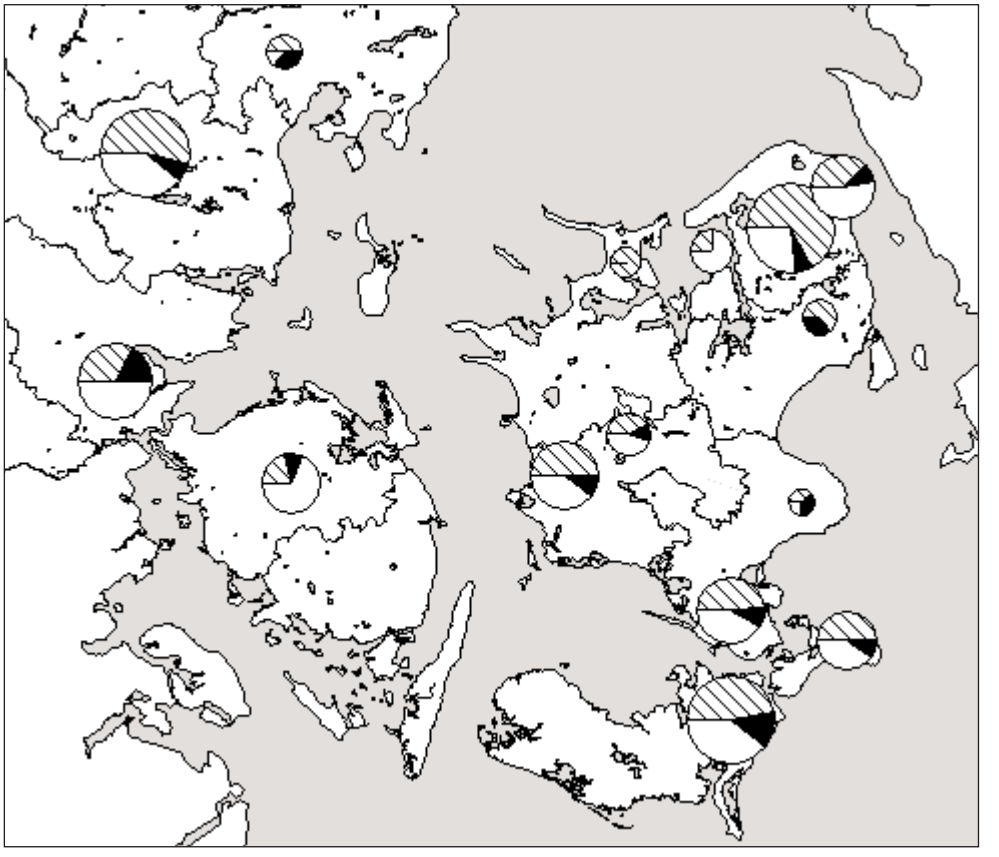

Fig. 29: *Relative composition of allowances to crown tenants in cubic measures, divided into fuel (hatched), carriage timber (black) and fencing materials (white) and distributed in counties (1731).*[132] *In general, the level of crown wood requisitions was declining during the eighteenth century.*

Based upon easily accessible serial records, an overview of the quantitative aspects of crown wood allowances in1731 can be produced (fig. 29).[129] The gradual application of the system to underwood is reflected in the allowance of fencing materials.

Peasants in areas with no woods were, in general, inclined to buy their fuel wood and timber in the market. Examples do exist, however, of crown tenants with no access to woods being allowed fuel wood from forests far away. In 1560 inhabitants in Western Jutland received allowances in the extensive woods of Skanderborg, Silkeborg and Bygholm County.[130] Long distance allowance such as this is possibly reflected in the payment of *skovvogne* (see p. 197). Tenants in the plains surrounding

129. Rigsarkivet, Rentekammeret 3321.10. and 333.338

130. Kancelliets Brevbøger 23.9.1560.

the capital were, correspondingly, allowed to buy fuel wood and wickers from the crown woods of northern Zealand.[131]

Similar individual rights to acquire wood in royal forests were, however, not restricted to peasants. Since the fifteenth century, the noble owners of Selsø Estate had held the right to receive fuel wood from the royal forest Hornsved twice every summer and twice every winter.[133] This privilege was last re-affirmed in 1570.[134]

Just like ministers (and freeholders), town dwellers required confirmed allowances in order to legally exploit their woods.[135] In the case of Nyborg, the duty was assigned to the burgomaster;[136] and in Vejle, two elected citizens were to do the job.[137]

Infrequent examples indicate that, in accordance with the legislation, private estates employed the allowance system in a manner comparable to the crown.[138] But some even appear to have preceeded the crown. In 1549 the chapter of Viborg determined that their tenants in Gudumholm should receive only five loads of brushwood from the fen and three loads from the wood.[139] Observance of this command obviously implied the existence of an allowance system. And in 1621 the forest ranger Christen Nielsen Degn in Kærende was accused by his employer, Ellen Rostrup in Vedø, of producing counterfeit ledgers of allowance in order to cut illegally in her woods.[140] So even on a relatively small estate such as Vedø the allowance system existed.

The late seventeenth century allowances on Tostrup (Kristianssæde) – that covered all wooden products from the estate – appear to be a response to the general command to conserve the forests formulated in the 1680 ordinance.[141] And the preserved allowance records demonstrate how windfalls, dead wood and fallen branches were, in general, preferred to vigorous trees as firewood. Firstly, they were obviously easier to employ. Secondly, the use of living trees was conceived as immoral as long as dead ones were available. When the first Danish *overjægermester* in 1670 suggested regular linear cuts, the idea was accordingly rejected by the government. 'As long as old, dead and rotten trees exist, no others should be cut;

131. Kancelliets Brevbøger 10.1.1574.
132. Rigsarkivet, Rentekammeret 3321.10.
133. Repertorium Diplomaticum regni Danici Mediaevalis II, no. 2443 (21.6.1468).
134. S. Gissel 1964, p. 34.
135. Danske Vider og Vedtægter 1, p. 106: Holbæk 1581.
136. Corpus Constitutionem Daniae 4, no. 476 (8.3.1634).
137. Corpus Constitutionem Daniae 3, no. 223 (29.3.1606), comp. Corpus Constitutionem Daniae 3, no. 189 (10.12.1603).
138. Jens Juels Skovbog (Christianssæde); H. Heide1921, pp. 27 ff (Svenstrup); B. Fritzbøger 1992A, pp. 218 f (Holsteinborg).
139. Diplomatarium Vibergense no. 342 (5.1.1549).
140. Viborg Landstings Dombøger 1618B, no. 79.
141. Jens Juels Skovbog fra Tostrup, p. 105.

while whether all trees cut should be felled in a straight line, that we doubt to be feasible'.[142]

The subjection of underwood to the same kind of allowances as the overwood is reflected in village by-laws. In the Græsted by-law of 1696 (§18) an undisputed obligation of underwood allowance is established.[143] And it continues, that 'when anyone is permitted to cut wicker, they must spare oak, beech and ash and other similarly sprouting trees that might be growing in the undergrowth'.

The generalised by-law known as *Rostgaards Skrå* even disallows the sale of fencing materials.[144] And similar prohibitions are found in the by-laws of Kirke Såby (§16), Stoense (§20) and Herrested (§9).[145] In praxis, compulsory allowance of underwood products was universal. Nevertheless, following lengthy legal suits in the eighteenth century, it was established that the brushwood parcelled among some royal tenants in southern Zealand could be employed without having it allowed by the forest rangers.[146] But this quite unique decision was later changed.

As a general rule, then, peasants whether tenants or freeholders were obliged to be allowed firewood by the authorities (lord or crown). But some exceptions from this rule did exist. The most renowned applied to the village Frejlev on Lolland.[147] By the beginning of the sixteenth century, its inhabitants were freeholders and in 1521 they received a letter from Christian II saying that they could freely dispose of the pannage in Frejlev Skov. This exemption from the interference of royal bailiffs in matters of branding swine, paying pannage etc. was later questioned by several county governors but approved by their kings.

In 1553 the county governor Jørgen Rued, for instance, accused the peasants of Frejlev of illegal cutting, since they used both overwood and underwood without prior allowance. But again the king supported the freeholder's claim and decreed that 'if the aforementioned citizens of Frejlev have until now received building timber and fuel wood from their woods, then you shall let them keep free building

142. Rigsarkivet, Danske kancelli C6, 664/1670: 'så længe der findes gamle udgangne og fordærvede træer, ej andre bliver hugget, mens om alle træer, som hugges, skal kunne blive fældet udi gerade linie, tvivler vi på at være praktisabelt'.
143. Danske Vider og Vedtægter 1, p. 44: 'og når nogen bevilgis at hugge giersel, skal de skåne eg, bøeg, aske og andre dislige opspirede træer, som i buskene kand verre opløben'.
144. Danske Vider og Vedtægter 1, p. 76.
145. Danske Vider og Vedtægter 1, p. 104 f; 3, p. 250; 4, p. 181.
146. H. Munk 1969, pp. 40 f.
147. W. von Antoniewitz 1944.

timber and fuel wood for the needs of their farms'.[148] In this way a specific privilege to utilise the mast in a freehold wood was transformed into a general self-determination, a process, which, in fact, continued during the following century.

A somewhat similar case concerned Majbølle, another Lolland village. In 1498 king Hans granted the inhabitants the right to cut fuel wood and wickers for free as long as they did not sell it or use it for charcoal burning. But seven years later the concession was annulled due to over-cutting.[149] It is, however, impossible to establish how many settlements nationwide had comparable privileges.

148. W. von Antoniewitz 1944, p. 71: 'dersom fornævnte vore Undersaatter udi Frejlev haver hidtil haft Bygningstømmer og Ildebrand af deres Skove, at du da lader dennem der og herefter beholde fri Bygningstømmer og Ildebrand til deres gaardes Behov'.
149. W. Christensen 1903, p. 180.

Chapter 13
Pasture, pannage and hunting

Grazing the woods

Relatively little is known about the regulation of wood pasture. In general it must, however, have followed the ordinary principles concerning common grazing.[1] The provincial laws present several attempts to restrict the number of grazing animals, since virtually all pasture was based upon common usage. Livestock from the entire village grazed both arable fields, in fallow as well as the stubble, and the outfields located at the frontier between neighbouring settlements. In many cases, both infields and outfields comprised woodland, so what was to be found there was by definition wood pasture. The key issue of legal regulation was, however, to counteract latent conflicts between grain-growing and stock-raising; i.e. to keep the animals out of the arable.

Inside as well as outside the woods the general rule applied that pastoral rights were based upon the possession of arable.[2] A particular clause on forest pasture, however, regarded the breeding of goats. They were firstly banned in the Recess of Copenhagen 1537, and four years later it was emphasised that 'no goats should be kept in this country either in *fællesskove* nor in other woods except what everybody can graze in their own *enemærke* and nowhere else'.[3] And this proscription was repeated in the Recesses of Copenhagen 1557 (§7) and Kolding 1558 (§65), so that only areas with high forest or moor were exempt.[4]

Accordingly, a particular royal privilege to the tenants of Rye in central Jutland to keep goats was renewed on several occasions.[5] And crown tenants in eastern Lolland were allowed only to keep goats in their own closes.[6] The general ban against goat raising in woodland tracts was repeated in the forest ordinance of 1670 (§9). A ban

1. P. Meyer 1949, pp. 145 ff; A. Hoff 1997, pp. 210 ff.
2. P. Meyer 1949, pp. 148 ff.
3. Danske Recesser og Ordinantser, pp. 188 f; Danske Kancelliregistraturer 1535-50, p. 171 (7.5.1541): 'ingen giedder ther i landet her efther skal hollis enthen paa fellits skovfe eller andre skovfe, uden hvis hver kand fri paa sit egit enmercke och icke anderstedts'.
4. Danske Recesser og Ordinantser, p. 250, Corpus Constitutionem Daniae 1, no. 1 (13.12.1558).
5. Kancelliets Brevbøger 26.2.1635; Dansk skovbrug 1710-33, p. 233.
6. Corpus Constitutionem Daniae 2, no. 419. (21.12.1585).

equally meant to protect scrubwood was issued in 1607, when the inhabitants in Malmøhus County were forbidden to let mares graze in the wood.[7]

The temporal and spatial co-existence of livestock grazing, haymaking and tree cutting was obviously not without problems.[8] In some cases, certain precautions were applied to reduce the negative effects of browsing. According to the 1717 by-law of Rynkeby, tree cutting in the paddock (*Kohaven*) was prohibited as long as it was used as common pasture.[9]

In 1473 *Fyns Vedtægt* resolved that animal stock should in general match the production capacity of every holding. This meant that every single peasant should be able to feed his cattle on the fields and meadows of his own farm and that the forest should suffer no damage by browsing. Furthermore, the statute decreed that leaf fodder was not to be included in the feeding: 'every man should have as much cattle as he is able to feed on his own grass and straw and not cut any man's woods for the cattle'.[10]

A similar prohibition against the use of leaf fodder was issued on Langeland some hundred years later. This, at least, appears as the most reasonable explanation for a royal interdiction according to which the crown 'will strictly disallow every one of you from cutting or allowing to be cut any scrubwood after Easter or in the summer time'.[11]

Within historical times, employment of leaf fodder is very sparsely documented in Denmark, even though this kind of forest management continued in most of our neighbouring countries.[12] The first and, apart from *Fyns Vedtægt*, by and large the only certain written evidence is found in *Skånske Lov* (article 195), which deals with cases where someone 'cuts for [his] cattle in another man's wood close'.[13] Furthermore it is possible that *fløhæ las* mentioned in article 191 of the same law refers to leaf fodder as well.[14]

By the beginning of the seventeenth century at the latest, the use of leaf fodder appears to be obsolete. Yet in times of famine it might have played a certain role. In the early spring of 1601, the inhabitants of Blekinge acquired royal permission to

7. Kancelliets Brevbøger 20.6.1607.
8. B. Fritzbøger 1992, pp. 225 ff.
9. Danske Vider og Vedtægter 1, p. 450.
10. Den danske rigslovgivning 1397-1513, no. 33 (15.9.1473): 'hwar man tilleggher swo møghitt fææ, som han fødhe vpa sit eyghit gress ok strafodher oc ey hugghe nogher mants skowæ foræ fææ'.
11. Corpus Constitutionem Daniæ III, no. 49 (20.1.1597): 'ville vi hermed eder alle oc hver serdelis strengeligen og alfvorligen forbudit hafve herefter nogen underskouf at hugge eller huggelade, efter paaske er gangen eller om sommeren'.
12. U. Emanuelsson 1996; J. Curman 1993; I. Austad 1988; R. Pott 1986; P. Rasmussen 1989; O. Rackham 1980.
13. 'Hoggær man foræ fæ i hæhnæÞæ skohe annærs manz'.
14. A. Hoff 1997, pp. 266 f.

use their woods for *fæhug* (literally 'cow cutting') as they were short of other fodder.[15]

Two partly complementary reasons might be suggested for the apparent early disappearance of shredding in Denmark. The one is the relative scarcity of wood, which instigated early measures of conservation. The other is the rich biological production in natural meadows and grasslands – compared with northern Scandinavia where leaf fodder remained widely utilised.[16] The need to employ twigs and leaves may simply not have existed.

Having a share in the village arable was a precondition for access to common pastures. According to the book, then, only cottagers with land could take part in grazing rights.[17] This universal precept was in force whether the pasture consisted of woodland or not. Further, we must remember that virtually all kinds of woodland were grazed from time to time. And, except for the enclosed *enemærker*, the pasture was common whether woods were allotted or not. As in Hel Skov, where 'the aforementioned proprietor owns the trees while the pasture [is] for Bælum village'.[18]

As stressed by Troels Fink, forest allotment concerned the trees but not necessarily pannage and pasture.[19] So common pasture usually continued after the formation of farm woodlots as long as they were not fenced. In general, the right to mow the forest floor or to cultivate parts of it presumably followed the holder of the particular woodlot. But allotment could result in other, more complicated, arrangements. It might be possible to have a meadow in the wood parcel of another farm simply because trees and land followed different allotments. So, in the sixteenth century, Fjellerup Kirkeskov belonged to the crown, but the local vicar possessed a meadow inside the wood.[20] And by the establishment of three parcels in Lystrup Skov in 1486, it was categorically decided that if the random distribution turned out in such a way that the meadow of one tenants was located beneath the trees of another, then the first mentioned should hold the right to make hay the first year, which implies that the meadow was to follow the boundaries of the woodlots.[21]

The distribution of pasture rights in common fields or *overdrev* is not immediately clear. In cases of woodland *overdrev* with both pasture and pannage, the two resources were not necessarily distributed proportionately. In Kindertofte *Overdrev*

15. Kancelliets Brevbøger 11.3.1601; B. Fritzbøger 1989B, p. 194.
16. U. Emanuelsson & C. E. Johansson 1987.
17. F. Skrubbeltrang 1940, p. 164.
18. Rigsarkivet, Christian Vs Matrikel vol. 1467: 'bem:te proprietarij eyer Træerne, mens græsningen til Bælum bye'.
19. T. Fink 1941, p. 56.
20. Kronens Skøder I, p. 99 (25.3.1564).
21. Repertorium Diplomaticum regni Danici Mediaevalis II, no. 5917 (7.8.1486).

on Zealand, the hamlet Næsby ved Skoven had 27% of the pasture but only 1% of the pannage rights.[22]

As a kind of land reserve, *overdrev* were often reduced by enclosure and cultivation even though legislation attempted to prevent this course of development. This was the case when the villagers of Stokkerup enclosed parts of the *overdrev* they had in common with Lyngby. When charged at the district court, they replied that for what they had enclosed they had given three times as much in the forest in compensation.[23]

The creation of manorial *enemærker*, in particular, caused the reduction of many *overdrev*. In 1579 the prominent noble, Peder Oxe of Gisselfeldt, included a part of Bråby *Overdrev* in his *enemærke*.[24] But the Supreme Court subsequently emphasised that the remainder of the *overdrev* was only to be utilised by the inhabitants in the neighbouring villages Bråby, Skuderløse, Testrup and Troelstrup (fig. 30).

Clearing of woodland *overdrev* did not necessarily aim at the creation of arable. From the early part of the period, a possibly old tradition is recorded of grubbing forest trees in order improve the pasture. In 1511 we are informed that the vicar in Søllinge cut a *brode* in Kirkeskoven and used its 'grass and land'.[25] In the other half of the monarchy – Norway – swidden cultivation in *bråter* remained a significant issue for centuries.[26]

Pannage

Since the pannage capacity formed an unrivalled method for quantifying forests, this particular kind of woodland management plays a considerable part in early modern written evidence, a part that presumably exceeds its actual importance as animal husbandry. Selective browsing is nevertheless likely to have contributed significantly to tree species composition in mast woods.[27] And regulation of pannage rights constitutes the foundation of a substantial number of trials.

According to Christian II's Rural Law, freeholders were allowed to brand their own swine for free and, if the wood's capacity exceeded, they should notify the county governor.[28] The basic concept of 'native-born swine' was apparently old. In 1492 the freeholder, Gravers Jensen, received a court ruling that he and his heirs held

22. Rigsarkivet, Christian Vs Matrikel vol. 168.
23. Sokkelund herreds tingbog 1632-34, 1632 no. 210.
24. Danske Domme 1375-1662 III, no. 470 (7.9.1579).
25. Repertorium Diplomaticum regni Danici Mediaevalis II, no. 11877 (9.8.1511): 'græs og grund'.
26. E.g. Min reise i Norge 1811, pp. 19 f.
27. S. Bjerke 1957 and 1959.
28. Den danske rigslovgivning 1513-23, no. 13, §105.

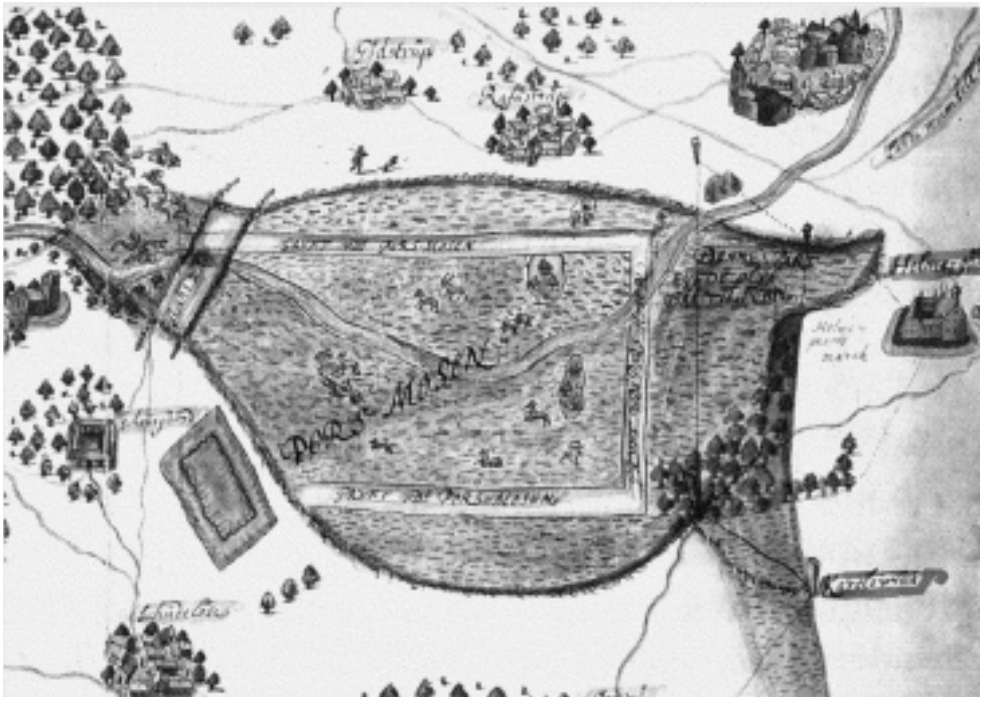

Fig. 30: *Section of manuscript map from c. 1670 showing the surroundings of Gisselfeldt Manor in Zealand. The hunting grounds in the extensive moor Porsmosen are fenced and of a part to the west (right) of the fence we are told that 'this part previously belonged to Oluf Daa' ('Denne Part eyede Oluf Daa tilforn'). South up. Nationalmuseet.*

the right to firewood from windfalls and 'mast for his native-born swine in Ferup Wood, in Vivild Field'.[29] And this also applied to vicarage woods, where ministers were permitted only to brand their own swine with specific royal sanction.[30] If this was not given, queen Sophie Amalie in 1662 emphasised that they should have them branded by the royal forest rangers.[31]

In crown tenancy woods, all fattening of swine did, of course, presuppose branding with 'his majesty's iron' for which *oldengæld* was to be paid.[32] Accordingly, peasants in the village Hagentorp in Skåne were severely scolded, when they exploited the mast in their woods without any consideration for royal interests, even

29. Fru Eline Gøyes Jordebog p. 263 (6.10.1492): 'oldenn til hans hiemfødde suin y Ferro skoug y Wiuild marck'.
30. Corpus Constitutionem Daniae 1, no. 749 (1.2.1575).
31. E.g. Rigsarkivet, Partikulærkammeret, Dronning Sophie Amalie, Dronningens resolutioner 11.10. 1662.
32. Corpus Constitutionem Daniae 1, no. 492 (24.9.1569).

though they were 'tenants, not freeholders, and the woods belong to us and the crown'.[33] On the other hand, a Supreme Court ruling of 1551 stated that the crown was not entitled to demand payment of pannage from tenants if their noble lords provided them with sufficient mast.[34]

In 1642 the provincial court in Zealand declared that swine were always to be branded when let out on pannage in another man's wood.[35] And *Danske Lov* of 1683 contains an obvious prohibition against letting swine into someone else's wood or collecting mast there (5-10-22, 6-15-30). Meanwhile, the law protects customary rights to pannage, saying that 'if an owner disposes of a wood that is assessed for pannage [...] and others have had pasture, coppice, arable or meadow in the wood for their farms since time immemorial, then they keep their rights which they have had since time immemorial and the one who owns the wood is not entitled to claim any right to pasture or hay-making or to apprehend more than overwood and ground as far as the branches and roots stretch'.[36] The Forest Ordinance of 1710 states that if discord among the owners was caused by pannage in *fællesskov*, then the larger owner could demand that the district court assessed how many swine each participant was allow to brand.[37]

In order to protect the pastoral grassland and mown meadows of the forest floor, pigs let into the forest were to be ringed. According to the forest ordinance of 1687 (§6) this was done from the early spring, and the proscription was not restricted to pannage hogs.[38]

The very modest rules given in national legislation were augmented by village by-laws. The one adopted in Kippinge repeats the command to ring swine before letting them into the woods.[39] Others, in accordance with the legislation in other parts of Europe, proscribe the beating down and gathering of mast.[40]

In praxis, it appears as if pannage rights followed the overwood. This is reflected

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33. Corpus Constitutionem Daniae 2, no. 145 (9.1.1579): 'efterdi i ere stubbebønder, icke jordegenne, och skoufvene tilhøre os och kronen'. For the interpretation of 'stubbebønder', see O. Kalkar 4, p. 175.
34. Danske Domme 1375-1662 I, no. 173 (12.6.1551).
35. Danske Domme VII, no. 902 (23.2.1642).
36. 5-10-21: 'Afhænder nogen Eiermand sin Skov, som til Sviins Olden er anslaget [...] og andre have af Alders Tid havt i Skoven deres Græsgang, Gierdsel, Agerland eller Engbond, som ligger til deres Gaarde, da beholde de deres Rettighed som de af Alders Tid havt have, og den, som Skoven eier, kan ikke tilholde sig nogen Rettighed der til Græsgang, eller Høebieringm eller tilegne sig videre end Oldentræerne og Grunden, saavidt som Grenene lude og Roden Rinder'
37. Dansk skovbrug 1710-33, p. 62.
38. Chronologisk Samling, p. 50.
39. Danske Vider og Vedtægter 1, p. 263.
40. Danske Vider og Vedtægter 1, p. 81 & 253.

in the wording of an early sixteenth century certificate of registration.[41] Here, the possessors of Krogsagergård in Jutland held the joint rights to 'cutting and pannage' (*hug og oldendrift*). To the extent in which the overwood was partitioned among villages, it follows that pannage rights pertained to particular settlements. And when an intra-village forest allotment had taken place, the pannage rights of the individual owners would naturally express their part of the overwood.

In principle, the norms according to which woods were valued from the fifteenth to the early seventeenth centuries appear to be fairly stable even though some spatial and temporal variance should be expected.[42] In general such assessments, however, varied far less than the actual mast production of forest trees. As pannage assessments were employed to express portions of property, they inevitably acquired a conservative character not always epitomising the advance of deforestation.

Nevertheless, pannage assessments were modified. The assessment of a forest simply declined parallel with the descending average age of its trees; i.e. the conversion of overwood to underwood. The *enemærke* woods of Keldkær Manor could, for example, be valued to a total of 300 'swine's mast in 1578, whereas their value was reduced to a mere 24 eighty years later.[43]

Annual appraisals of actual mast production formed a contrast to the assessment connected with taxes and other kinds of property valuation. They were used as basis for the payment of *ad hoc oldengæld*. The procedure appears to have remained fairly unchanged throughout the late medieval and early modern period. In late summer or early autumn, court surveyors would generally examine each wood's potential for pannage. After this, they produced as assessment expressing how many swine each farmer could send to each specified wood. And finally, *oldengæld* was often paid in kind to the forest owner as the pigs were reclaimed from the wood.

In November 1449 surveyors estimated that a vicar in Lolland could maintain 100 hogs in the glebe lands and the woodlots pertaining to the church.[44] In other (not so ordinary) cases, such estimates distinguished between oak and beech mast: 'Mr. Clemen could free fifty swine in the oak wood and fifty swine in the beech wood, when it bears'.[45]

Since the mast was obtained from the overwood, the woodland property rights of the lord comprised pannage rights – and the incomes from the pannage rent (see p.

41. Repertorium Diplomaticum regni Danici Mediaevalis II, no. 10207 (8.12.1504.
42. B. Fritzbøger 1990B.
43. B. Fritzbøger 1990B, p. 142.
44. De ældste danske Archivregistraturer V, p. 839.
45. De ældste danske Archivregistraturer V, p. 1083: 'her Clemen paa syn andell frii kunde paa for^{ne} skouffue [...] halfftridiesindethiuffue suin y eggeskoffuen och halfftridiesindetiuffue y bøgskoffue, nar han ber'.

••) could be considerable. A great number of tenants accordingly experienced various degrees of compulsion when it came to letting their swine in the woods. In 1616 the crown tenants of Silkeborg County were bluntly informed that they had no right to let their pigs in the woods of other landlords than the crown.[46]

In general, regulation of the mast resources was essential to the management of the estate. The queen mother, Sophie, ordered her *fogder* not to receive any swine on pannage in 1596 either from her own tenants or from those of her noble neighbours since her own breed was more than sufficient to exploit it fully.[47] In 1634, on the other hand, the pannage assessment of the same forests was not accomplished since many peasants sent their swine to woods in Langeland and Holstein instead.[48] So, in order to eliminate this deficit, they were instructed to pay the residue. Likewise, communities would sometimes reserve the pannage of their village wood for themselves.[49] By the beginning of the eighteenth century, customary pannage rights were no longer exercised. In 1742, for example, the crown issued a bill publishing the conditions upon which the annual auction of pannage rights was to take place. According to its third paragraph, 'the highest bidder is warranted either to enjoy the mast for his own pigs or to transfer it to others'.[50]

To sum up, the utilisation of the fruits of beech, oak and hazel trees went through a development from self-sufficiency through state and seigneurial restrictions and control to end as a simple commodity to be sold on market terms.

Hunting laws

A motto of King Frederik II was '*Treue ist Wildprett*' – 'trust is (as exquisite) as venison'.[51] In his days, hunting formed a cardinal element in court ceremonies, and, with minor fluctuations, the royal propensity for hunting continued through the centuries.[52] So it was no coincidence that hunting interests were mentioned before forestry, when Frederik II's grandson – the maker of Danish absolutism, Frederik III, – appointed Vincents Joachim Hahn to command the royal forests in 1661.[53] And his title was accordingly *overjægermester* (Master of the Royal Hunt), not *overforstmester* (Master of the Royal Forests).

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46. Kancelliets brevbøger 2.7.1616.
47. Frederik IIs Enkes Dronning Sophies Kopibøger, p. 192 (12.9.1596).
48. Prins Christian (V)'s Breve I, p. 157 (10.12.1634).
49. Sokkelund herreds tingbog 1632, no. 369 (8.11.1632).
50. Rigsarkivet, Rentekammeret 3321.68: 'Den höjstbiudenden berettiges at niude oldenet for endten selv derpaa at lade indbrende sviin eller samme til andre at udlege og overdrage saaledes'.
51. E.g. A. Wittendorff 1989, p. 305.
52. C. Weismann 1931, *passim.*
53. Overjægermester Hahns bestalling.

The royal administration and legislation of hunting and game preservation was extensive. Naturally, hunting was not restricted to woodland areas, But these certainly dominated both royal and private hunting grounds. As it had in the Middle Ages, therefore, hunting legislation greatly influenced forest usage.

The qualification and restriction of property rights regarding hunting concentrates on four major issues: the use of wood commons, protection of game, struggle against poachers and restriction of peasant hunting, and finally the development of certain royal hunting privileges.

During the entire period in question, some level of property rights was considered the essential justification to hunt in a specific area.[54] In the wording of Christian IV's so-called Great Recess from 1643, 'no one is permitted to hunt, shoot, fish or permit fishing in places where he has no part in the land, unless he will be charged and put on trial which can result in sentence and conviction'.[55]

In *fællesskov*, the same basic precept pertained to all other kinds of common natural resource exploitation. So, according to fifteenth century recesses, no single landowner was allowed to take more animals than his share of the common could warrant. In the Kolding Recess of 1558, as well as in Frederik II's coronation charter of the following year, this notion was somewhat restricted. In *fællesskov* in which the crown was participant, nobody else were authorised to hunt.[56]

Apart from this obvious attempt, various actions to propagate and preserve game formed a core issue among those legal measures meant to promote royal hunting interests. Among them were numerous efforts to restrict peasant dog-keeping and the possession of firearms.[57] Likewise, the use of pointed vertical poles in field fences was banned to protect the deer against casualties.[58] And determined attempts were made to exterminate predators such as wolves, eagles and foxes.[59] Alongside these measures, temporary conservation of particular game species had been employed since the fifteenth century.[60] The Hunting Ordinance of 1681 even introduced fixed conservation periods in common hunting grounds.[61]

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54. E.g. Corpus Constitutionem Daniae IV, no. 405 (25.8.1631).
55. Corpus Constitutionem Daniae V, no. 143, §2.25: 'Ingen maa jage, skyde, fiske eller fiske lade paa de steder, hand sig icke laad och del til grunden kiender, med mindre hand derfore vil tiltalis oc stnde til rette som loug oc dom kand med føre'.
56. Corpus Constitutionem Daniae I, no. 1 (13.12.1558).
57. For the period 1558-95 e.g. Corpus Constitutionem Daniae I, no. 20, 27, 58, 116, 120, 322, 666, 668, 694, 721 and 740, Corpus Constitutionem Daniae II, no. 151, 164, 199, 262, 338, 356, 426, 441 and 637; C. Weismann 1931, pp. 39 ff.
58. Corpus Constitutionem Daniae III, no. 153 (12.1.1601).
59. C. Weismann 1931, pp. 94 ff.
60. Den Danske Rigslovgivning 1397-1513, no. 33 (15.9.1473); Corpus Constitutionem Daniae II, no. 102 (20.4.1578).
61. C. Weismann 1931, p. 123.

Based as they were upon landed property, social distinctions were paramount for the formulation of hunting rights. Restrictions of peasant hunting had already been introduced in the legislation of the fifteenth century. *Lollands Vilkår* (1446) banned peasants from having more than one hound.[62] And the restrictions continued during the sixteenth.

In 1515, the peasantry was totally prohibited from keeping hounds and from shooting deer.[63] And in the short-lived legislation of Christian II, the number of hounds legally to be kept at monasteries was restricted. In 1532 peasants and townsmen were prohibited from shooting deer and hare, a ban that was repeated in the 1539 recess.[64] And similar notions are found in most subsequent legislation.[65] So, the efforts of the crown were twofold – to exclude the peasantry and to limit noble participation in hunting.

If professional hunters employed by noble landlords were captured during illegal hunting, then their master was basically accountable. But if individual, unemployed hunters were caught shooting in crown woods, then they were regarded as poachers and punished accordingly. By definition poachers were people who 'shoot and destroy game and who do not serve the landlord for clothes nor money, nor are in his service'.[66]

The endeavour to hunt down poachers was pursued with passion. In 1627 a peasant was imprisoned in the naval docks for a year simply because hair from a deer was found in his dwelling.[67] The Kolding Recess of 1558 sanctioned that poachers caught red-handed could be blinded immediately.[68] Yet there is no evidence that draconian measures such as these were ever employed, even if the death penalty was the common outcome of a lawsuit.[69] In 1574 two felons were hanged near the wood in a double-gallows adorned with antlers of the deer they had shot.[70] This was done to discourage others, and in broad outlines the crown succeeded in this effort. During the entire period, poaching appears to have occurred only marginally.[71]

The sixteenth century recesses not only disallowed peasant hunting, they also

62. Den Danske rigslovgivning 1397-1513, no. 18.
63. C. Weismann 1931, pp. 39 f.
64. C. Weismann 1931, p. 42, 539.
65. E.g. Corpus Constitutionem Daniae I, no. 594 (30.10.1571).
66. Corpus Constitutionem Daniae V, no. 143 (27.2.1643): 'Alle de regnis for krybeskyttere, som skyde oc ødelegge vilted oc dog icke tiene deris hosbonder for klæde oc penge oc søge der dug oc disk'.
67. Kancelliets brevbøger 14.1.1627.
68. Corpus Constitutionem Daniae I, no. 1 §67 (13.12.1558).
69. C. Weismann 1931, p. 47.
70. Kancelliets Brevbøger 18.11.1574.
71. C. Weismann 1931, p. 151; H. Munk 1955, p. 268; B. Fritzbøger 1989B, pp. 207 ff.

restricted the self-determination of noble landlords in these matters. In *enemærker* they were free to do as they pleased, but in the commons of open fields, forests and *overdrev*, notable restrictions were imposed upon their property rights. So the Kolding recess emphasised that 'no one shall entitle anyone else to hunt or shoot on his property unless it is *enemærke*. If anyone wishes to use his hunt and freedom in an area in which he takes part [...] then he himself or his servants shall do it and he must not allow others to hunt in those woods or properties in which he takes part'.[72]

The issue of noble privileges in 1661 declared all aspects of hunting a royal prerogative.[73] So 'whatever tenants and possessions the nobility might have in the royal *vildtbane*, the nobility can be granted or allowed no hunting since this is the sole privilege of the crown'.[74] Outside these specified areas, however, noble landlords kept hunting rights in their *enemærke* and in tenant lands within a circuit of 15 kilometres from the manor.[75]

As the noble class was differentiated in 1671, so were its rights. Counts and baronets of the newly appointed nobility achieved full hunting rights, whereas owners of ordinary complete estates were restrained from hunting large game in those commons in which they took part. Finally, owners of non-complete estates attained full hunting rights in their *enemærke* but no hunting in commons and no entitlement to employ hunters.[76]

The royal hunt

More than anything, the development of royal *vildtbaner* reflects the social pretensions underlying hunting legislation. It was the expressed wish of Frederik II through his policy of real property exchange to establish extensive coherent *vildtbaner*.[77] But as was the case abroad, various kinds of preserves already did exist by his coronation in 1559.[78] According to Carl Weismann, 'it appears as if *fredejagter* means areas in which the king was the only possessor of hunting rights whereas the

72. Corpus Constitutionem Daniae I, no. 1 §68 (13.12.1558): 'Skal och ingen gifve anden loug at jege eller skiude paa sin eiendom uden paa sit enemerke. Vil nogen brugge sin jagt och frihed der, som hand hafver laad och diel [...]daa skal hand sielf jege eller hans eget folk, och skal icke nogen mue giffve andre loug at jege pa de skoufve eller eiendome, som hand hafver laad och diel udi'.
73. A. F. Bergsøe 1842, p. 110.
74. Kongelige Reskripter I, pp. 38 ff (24.6.1661).
75. C. Weismann 1931, pp. 117 f.
76. C. Weismann 1931, p. 131; the privileges are reprinted in L. Dombernowsky 1983, pp. 404 ff.
77. T. B. Bang 1918, p. 27; C. Weismann 1931, p. 62.
78. E.g. F. Mager 1941.

nobility could take part in the hunting in *vildtbane*r'.[79] Such *vildtbaner* appear to have had some similarity with the *forestis* of Norman Britain.[80]

Sixteenth century royal *vildtbaner* were not, however, only or maybe even not primarily characterised by their geographical extent. In an letter of enfeoffment, the crown could ordain that the receiver should 'keep himself totally from our *vildtbane* and from chasing or shooting in any way'.[81] Since he undoubtedly could not avoid walking about in it, the *vildtbane* must have designated a particular use of the same rather than a specific area.

Royal *vildtbaner* prevailed in areas with substantial concentrations of crown lands. They did not exclude the presence of other owners but they did definitely restrain the performance of their property rights. Conflicts were, consequently, inevitable. From the reign of Frederik II, in particular, numerous ventures to confirm royal hunting supremacy in the *vildtbaner* are preserved.[82]

Naturally, this affected the valuation of landed property within the boundaries of royal *vildtbaner*. So property restrictions were clearly of importance when the sale of a freehold farm in the Skanderborg *vildtbane* was annulled due to its location.[83] And the village Ortved in central Zealand consisting only of tenants of noble estates was enclosed from the *vildtbane* with a fence in order to protect the royal hunting prerogative.[84] This Ringsted *Vildtbane* later disintegrated as crown lands were sold.[85]

Furthermore, the wild animals safely protected by a royal *vildtbane* was a serious menace to rural society. Numerous protests against damage caused by the game are recorded during the seventeenth and eighteenth centuries.[86] In 1560 the prominent aristocrat, Mogens Gyldenstjerne, complained that 'there is such abundance of game in the forest that in these days cabbage can hardly be found in the villages near it; the animals have eaten it all'.[87] And eighty years later crown tenants in the *vildtbane* of southern Zealand even obtained a reduction of their annual rents, since much of their harvest was wasted by the deer.[88]

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79. C. Weismann 1931, p. 62: 'Det synes, at der ved Fredejagter er forstaaet Arealer, hvor Kongen var eneberettiget til Jagten, medens der i Vildtbanerne kunde være Jagt fælles med Adelen'.
80. J. Tsouvalis 2000.
81. Danske Kancelliregistranter 1535-50, p. 407 (13.3.1549): 'aldeles entholde sig vor Vildtbane og at jage eller skyde i nogen Maade'
82. E.g. Corpus Constitutionem Daniae I, no. 638 (12.3.1573), II, no. 132 (3.9.1578) and II, no. 560 (20.7.1591).
83. Kancelliets Brevbøger 11.7.1590.
84. Kancelliets Brevbøger 3.3.1574.
85. C. Weismann 1931, p. 167.
86. E.g. K. C. Rockstroh 1925, p. 40.
87. Breve til og fra Mogens Gyldenstjerne og Anne Sparre, no. 121 (24.11.1560): 'tha er ther møget stort wildt paa skouenn, saa ther skall paa thenne tyd icke findes møget kaal y skowbiude; thiiren haffue them ald opedet'.
88. Kancelliets Brevbøger 16.11.1642.

Fig. 31: *Hunting rides in northern Zealand c. 1700. Manuscript map Rigsarkivet (Hærens Arkiv).*

As already mentioned, the hunting interests of the royal family continued throughout the period. As a special feature, an extensive network of hunting rides or glades was prepared in the *vildtbane* in North Zealand during early absolutism (fig. 31).[89] By 1710 no less than twenty-seven people were kept in permanent employment solely for the 'English hunt', for which this impressive complex of roads was established.[90] In addition, the crown employed several gamekeepers, falconers, assistants etc.

In the extensive abalienations of crown lands during the 1660's and 1710's, the crown often retained its hunting rights.[91] However, they appear to have been sold subsequently, and the *vildtbaner* of the eighteenth century largely conformed to the regimental districts. In accordance with the hunting ordinance of 1688, hundreds of

89. P. C. Nielsen 1974A.

90. Rigsarkivet, Rentekammeret 333.624, Litra Ua 3.

91. C. Weismann 1931, p. 167.

wooden poles were put up to demarcate the royal *vildtbaner* in which only the king assumed a hunting right.[92] During the 1740's, they were substituted by chiselled stones.

92. K.-E. Høgsbro 1977.

Chapter 14

Resource conservation and discipline

Prevention is better than cure

Large parts of the written evidence applicable to a description of the medieval and early modern history of woodland proprietorship originate from juridical conflicts. Regulatory legal texts focus upon anticipated differences, and court rulings upon tangible quarrels. Our endeavour must be to capture everyday conceptions of property on the basis of extraordinary conflicts. Yet, in some respects, disputes over property claims appear to have been a more prominent part of everyday life than trouble-free submission to them.

The universal interdiction against cutting without prior allowance, transgressing of woodland boundaries, fattening of pigs in a wood owned by someone else etc. were recurrently restated in order to stem unlawfulness. Representatives of the crown as well as private landlords frequently appeared in court only to read an admonition or declare the conservation of a certain wood.[1] In order to substantiate such declarations – or to serve as basis for litigation – the courts were also requested to let surveyors inspect the woods.[2] And in at least two sixteenth century cases, royal decrees banned sailors cutting in woods located on islands (partly) possessed by the crown.[3] It is, however, doubtful if such preventative measures had any effect at all.

Similar examples are numerous. In 1504 the Chapter of Roskilde sought to safeguard its woodland rights in the village of Torkildstrup by means of a royal warning.[4] It appears as if this form of superfluous admonition against illegal acts was conceived as a necessary re-statement of property rights. In 1505 King Hans banned cutting in the *enemærke* woods in Sweden belonging of Erik Ottesen's

1. E.g. Repertorium Diplomaticum regni Danici Mediaevalis II, no. 10809 (27.5.1507).
2. E.g. Repertorium Diplomaticum regni Danici Mediaevalis II, no. 10340 (31.3.1505); Rigsarkivet, Danske Kancelli B 112b.
3. Corpus Constitutionem Daniae 2, no. 15 (11.8.1571) and no. 187 (8.12.1579).
4. Repertorium Diplomaticum regni Danici Mediaevalis II, no. 10069 (15.5.1504).

widow, Birgitte, and two years later a similar procedure was employed to shelter the *enemærke* of Vemmetofte in Zealand.[5]

In 1566 Frederik II felt obliged to ban cutting and bark stripping of trees in peasant fields and meadows in Rørum, Albo District,[6] and the following year the cutting of oak and beech in Bursø Skov was prohibited.[7] In another incident it was asserted that cutting by strangers in the woods of the village of Opnöre in Halland would be punished as ordinary theft.[8] Two years later it was observed that the villages surrounding the wood were cutting heavily in order to maintain small arable plots. For this reason the crown resolved that 'everyone who does not possess a part of the wood is banned from cutting whereas the owners should uphold the plots'.[9]

The practice appears to have continued during the seventeenth century. In 1630 a royal forest ranger in Nærum addressed the district court in order to prohibit all cutting of brushwood outside the tenants' own woodlots.[10] And three years later, he repeated that 'no one shall endeavour – whoever they be – in Trørød lands or Weffbechs close to cut or coppice, old or green, overwood or underwood, hazel or thorn [...] since it is his majesty's *vildtbane*'.[11] Similar notifications are found in other court records.[12]

Related to such recordings were the inclusive interdictions against cutting that were included in pre-1660 letters of enfeoffment;[13] and – no wonder – in the nomination of forest rangers and chief forest officers (*skovridere*).[14] Needless to say, such proscriptions were not always observed. When the prominent aristocrat and royal councillor, Peder Oxe, fell from grace, it was allegedly in part because he had overcut his forests.[15]

5. Repertorium Diplomaticum regni Danici Mediaevalis II, no. 10809 (27.5.1507).
6. Corpus Constitutionem Daniae 1, no. 315 (26.5.1566).
7. De ældste danske Archivregistraturer III, p. 307 (1567).
8. Corpus Constitutionem Daniae 1, no. 696 (30.3.1574).
9. Corpus Constitutionem Daniae 2, no. 1 (10.1.1576): 'skal være alle, som ikke er lodsejere forbudt at hugge i skoven, hvorimod lodsejerene skal vedligeholde bråderne'. The interpretation of the term 'bråder' is based upon A. Berntsen 1656, Second Book, p. 40.
10. Sokkelund herreds tingbøger 1628-30, p. 238 (25.2.1630).
11. Sokkelund herreds tingbøger 1632-34, p. 206 (12.12.1633): 'ingen sig schall driste till, ehuem de ere, vdj Trørøds holme och venge, Weffbechs haffue enten huge eller hamble, gamellt eller grønt, dedt vere hoffuetschouff eller wnderschoff, hesell eller tiørne [...] eptersom dedt er k.m. vildbane'.
12. E.g. Falsters Sønder herreds ting 10.11.1653 (p. 38r).
13. W. Christensen 1903, pp. 231 ff.
14. E.g. Kancelliets brevbøger 9.9.1584.
15. P. Colding 1939, p. 38.

More than his parcel permits

According to St. Ambrose, it was the basic conception of commonage that no participant was permitted to exploit it further than justified by his fraction of the total resource.[16] And this principle was amply reflected in Danish legislation and administration.[17] In 1566 a peasant was convicted for having cut more of a windfall than his share of the wood common permitted.[18]

The deceptive distinction between *enemærke* and *fællesskov* was pertinent in the legal actions taken by Barbara and Oluf Stigsen at Albo District Court in 1470.[19] They complained that the peasants of Ingelstad and Järrestad Districts were about to re-establish the ancient *alminding* that once crossed the border of the three districts. In order to counter this action, elders pointed out the borderlines, not only the one surrounding Stigsen's close but also those delimiting the districts.

The injunction to dissolve overwood commons before exploiting the trees was not always observed strictly by the courts. In 1589 the Supreme Court rejected complaints of Jørgen Daa and acquitted the noble widow, Anne Abildgård, for cutting in their common overwood, since she had cut no more than her part allowed.[20] By contrast, the provincial court in Zealand two years later annulled the village by-law of Stigs Bjergby on the grounds that it allowed the peasants collectively to take windfalls and rotten trees from Bjergby Fællesskov subsequently to distribute their takings in proportion to the size of their part in the wood.[21] For the wood had never been divided in observance of the Kolding Recess. Clearly, legal usage on this matter was ambiguous.

A particular situation arose when landed possessions were lent or rented to someone else. In 1547 a Peder Thomsen in Lejrskov accused Bertil Thomsen and Niels Clausen of having over-cut the wood on a piece of land which they had borrowed from him.[22]

16. O. Fenger et al. 1982, p. 31.
17. E.g. Kancelliets Brevbøger 20.6.1636.
18. Danske Domme 1375-1662, II, no. 308 (1566).
19. Repertorium Diplomaticum regni Danici Mediaevalis II, no. 2772 (30.7.1470) and no. 2849 (27.11.1470).
20. P. Meyer 1949, p. 202.
21. Danske Domme 1375-1662 V, no. 674 (3.11.1591).
22. Rigsarkivet, Rettertingsdombøger 29.1.1547.

Transgression of woodland boundaries

The praxis of defining the physical extent of woodlots was, naturally, of primary importance to the maintenance of the property structure. Attempts to change or obscure boundaries were considered as serious offences. When a late sixteenth century peasant had cut down a marked boundary tree, he was convicted not as a forest thief but as a forger.[23]

Discord could, naturally, arise from the very process of allotment. In 1640, Otte Brahe of Næsbyholm claimed that his woodlot had become too small when compared with those of other owners.[24]

By definition, cutting on the 'wrong side' of an established property boundary was illegal. So, if someone cut trees in the manorial *enemærke*, in his neighbour's enclosed woodlot or in the *fællesskov* of an adjoining village, it was regarded as a felony. Several cases of the two first kinds of transgression have been handed down from the Late Middle Ages, whereas instances of the latter appear to have taken place within the framework of a peasant autonomy still by and large untouched by written culture. A singular exception was a case in which the tenants of Eskildstrup (Zealand) testified that they had forcibly been deprived of their enclosed (*lodskyffth*) village wood.[25]

As borderlines were not always clearly marked, the actual localisation of farm woodlots appears frequently to have been difficult. In a 1616 trial Jens Pallesen from Over Fussing could not deny that he had assisted Christen Jensen in the neighbouring Ålum in illegal cutting.[26] As they were cutting, he suddenly got suspicious and, asking Christen if it was his woodlot, received the simple answer 'no'; it belonged to Peder Vestergård.

Many village by-laws emphasise the strict observation of woodlot borders when cutting.[27] And in those cases where no allotment had taken place, outsiders were explicitly banned from cutting in the common wood.[28] In this manner admittance to such village woods could be *de facto* forbidden.[29]

Around 1500 the by-law of Allesø on Funen stated that 'if any man ventures to cut in another man's woodlot by his free will, either large wood or small, which everybody has been free to cut since olden times, whether it happens by night or day, and

23. Kancelliets Brevbøger 21.7.1590.
24. Rigsarkivet, Rettertingsdombøger 6.5.1640.
25. Repertorium Diplomaticum regni Danici Mediaevalis II, no. 2039.(20.3.1466) and no. 7270. (13.12.1492).
26. Viborg Landstings Dombøger 1616-1618, 1616B no. 80.
27. E.g. Danske Vider og Vedtægter 1, p. 307 (Østrup 1598) and p. 337 (Lumby 1592).
28. Danske Vider og Vedtægter 1, p. 372 (Vejlby 1702).
29. Danske Vider og Vedtægter 1, p. 286.

he or his farm hand is taken red-handed or it can be proved [that he did it] then he shall pay for the wood and give two barrels of beer to the village'.[30]

Discord over woodland boundaries was, however, not restricted to negligent peasants who had not yet allotted their *fællesskov*. When landlords took advantage of their right to exploit the overwood, they were sometimes liable to let the cutting take place in the neighbouring wood instead of in their own. In 1506, for example, the nobleman, Lauge Brock, was accused of having cut no less than three hundred oak trees in a wood that in fact belonged to Niels Høegh.[31] And several similar cases are known.[32]

Analogous to struggles over the whereabouts of a woodland border are those legal cases in which two or more opponents contest the ownership of a certain wood or woodlot. Such cases are equally plentiful.[33] In 1466 surveyors concluded, for instance, that Bøgeskov in Rynkeby parish belonged to Eggert Bille and not to Niels Lykke who challenged his ownership.[34]

Enemærkeskove were naturally considered as entirely the owner's property. Consequently, the appropriation of wood from such closes was illegal and punishable. But rather than proceeding against specific violations, *enemærker* generally appear to have been legally protected by a repetitive demarcation of their borders through perambulation (see p. 72). Numerous medieval cases are, therefore, related to the question of whether a certain wood (or part of wood) should be considered as common or *enemærke*.[35]

A major sixteenth century struggle between the royal county governor on Falster, Oluf Holgersen, and Bishop Jens of Funen was closely related to woodland usage.[36] In a virtual feud between the two, Oluf Holgersen attempted (according to his opponent's complaint, which is our only source for these events) to appropriate the wood Kvindet from the episcopal estate Skørringe. On 19 March 1511, a local court recognised Holgersen's claim and declared him rightfully to own Kvindet. But shortly after, the bishop could produce documents according to which it was an enclosed

30. Danske Vider og Vedtægter 5, p. 36: 'Findis nogen mand som fordrister sig till at huge i en andens Schouff-schift med sin fri willie, enten stor Schouff eller liden, som huer mand aff gamell tid haffuer hafft frihed till att huge, hvad heller det scheer natt eller dag, och hand tagis pmed fersche gierningen hand eller hanz bud, eller det kand dennom schelligen beuisis paa, da betalle manden sin scouff och giffue 2 sldt. tønde øl till byen'.
31. Danske Domme 1375-1662 I, no. 44 (22.4.1506).
32. E.g. Danske Domme 1375-1662 III, no. 431 (16.1.1575); Kancelliets Brevbøger 28.1.1624.
33. E.g. Repertorium Diplomaticum regni Danici Mediaevalis II, no. 2236 (2.3.1467).
34. Repertorium Diplomaticum regni Danici Mediaevalis II, no. 2007 (5.1.1466).
35. E.g. Repertorium Diplomaticum regni Danici Mediaevalis II, no. 2322 (26.11.1467), 2756 (23.6. 1470).
36. Repertorium Diplomaticum regni Danici Mediaevalis II, no. 11905 (2.9.1511).

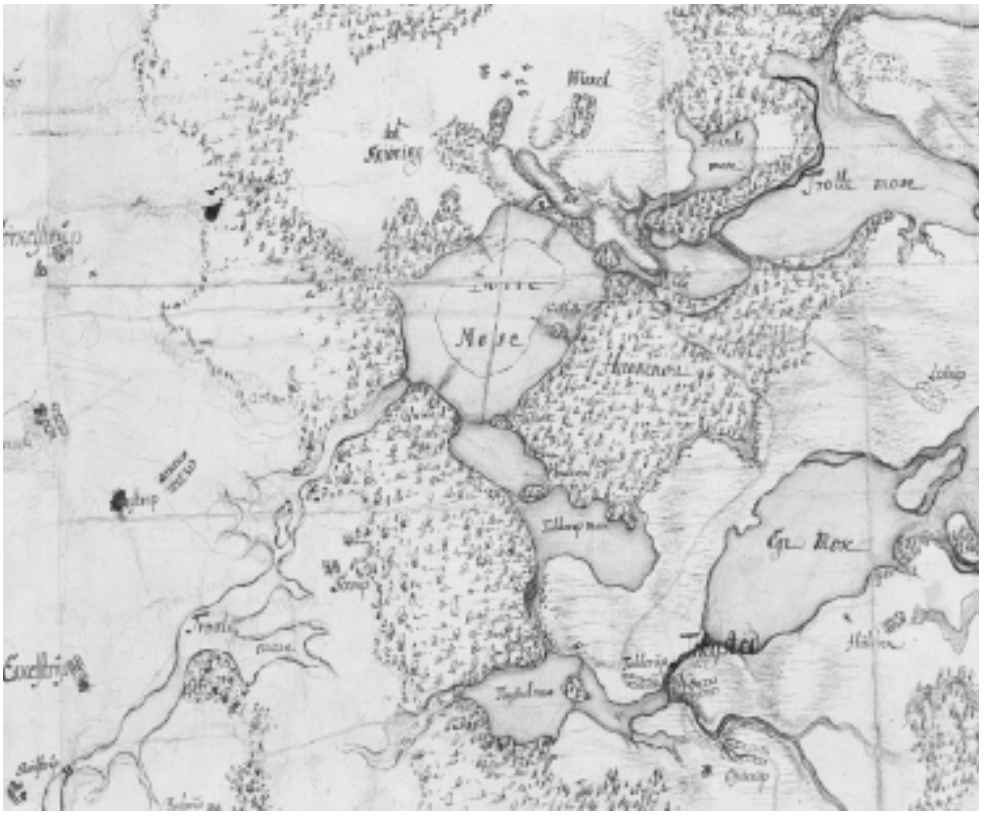

Fig. 32: *Skørringe Manor with its surrounding forests and meadows 1692. The wood Kvindet (Quinnet) is almost in the centre. Extract from map drawn by Christof Hoffmann. Det kongelige Bibliotek.*

enemærkeskov belonging to Skørringe. Meanwhile, the county governor continued to cut trees in Kvindet, and in the pannage season his pigs exploited the mast so that the bishop's were dislodged to royal forests where their owner was obliged to pay for them. The fight continued with other aspects and in other parts of the island, and as it reached its climax, the episcopal servants had to leave Falster in order to save their lives. In 1604, however, Kvindet was regarded as a part of the Skørringe *enemærke.*[37]

Even though the means employed were modified, similar struggles among landlords over woodland ownership and their boundaries took place in large parts of the period.[38] In 1636 the two widows Dorete Munk and Karen Lange, for example, quarrelled about the boundaries between Vrå and Sødal in Jutland.[39] And four years later,

37. Danske Kancelli. B. 94, 1.10. 1604.
38. E.g. Rigsarkivet, Rettertingsdombøger 10.7.1537, 29.1.1551, 3.11.1568, 10.8.1570, 16.12.1570, 15.6.1574, 19.10.1599, 23.10.1599, 25.5.1619.
39. Kancelliets Brevbøger 22.5.1636.

Tage Thott and Corfits Gabriel contended the two woods Bregnerød and Vrange Bøgeskov in Skåne.[40]

Cutting and selling without allowance

We know fairly little about peasant trespassing in the fifteenth and sixteenth centuries. Yet in a number of cases surveyors concluded that forests were cut illegally.[41] In 1475 Bent Bille announced that illegal cutting had taken place in Thynneskow that demonstrably was his *enemærke*.[42] Thirteen years later, another of his forests is described as totally demolished by local peasants.[43]

More rarely, written evidence leads us to the actual felons and describes their crime in some detail. In 1468 a journeyman tailor was convicted for having cut in a wood close in Bjerge District (Funen).[44] And during the trial in 1485, the owner of Øllingesøgård Estate, Stig Pors, related how he had one day observed Anders Skrædder's boy lopping a birch tree in Øllinge Mose.[45] The brushwood he put in some kind of bag, and when he had descended from the tree, he gave it to his master who loaded it on a carriage. Stig Pors had instantaneously beaten Anders Skrædder with his rapier, but on the day of the trial he was neither 'blue nor bloody'. As a result of this collision, the lord declared Øllinge Mose 'in peace' so that future offenders would pay no less than 40 marks. Again, the oral and written declaration of ownership formed an integral and vital part of its very existence.

Of the numerous legal cases dealing with forest theft in the seventeenth and eighteenth centuries, the overwhelming majority concerned peasants who lacked valid allowances as they cut.[46] Only very few studies, however, endeavour to quantify or further elucidate the issue. In Falster, the district court treated 63 cases concerning forest theft during the period 1677-95.[47] Setting aside cases about private debt and the payment of feudal rents, which together made up almost two-thirds of all proceedings, forest theft constituted 10.4% of the rest, making it one of the most fre-

40. Kancelliets Brevbøger 7.8.1640.
41. E.g. Repertorium Diplomaticum regni Danici Mediaevalis II, no. 5963. (23.11.1486); Aktstykker til Bornholms Historie no. 34 (1495?).
42. Repertorium Diplomaticum regni Danici Mediaevalis II, no. 3600.(11.4.1475) and no. 3930 (28. 11.1476).
43. Repertorium Diplomaticum regni Danici Mediaevalis II, no. 6513 (12.6.1489).
44. Repertorium Diplomaticum regni Danici Mediaevalis II, no. 2418 (9.5.1468).
45. Repertorium Diplomaticum regni Danici Mediaevalis II, no. 5754 (13.10.1485).
46. H. H. Fussing 1934-36, p. 214; G. Olsen 1960, p. 133; T. Munck 1979, pp. 102 ff; C. Bjørn 1981, p. 52.
47. J. C. Vesterskov Johansen & H. Stevnsborg 1983.

quent offences (Σ=604). Yet settlements between offender and offended leading to some kind of fine must have been fairly common, for there were considerably more people who were actually fined for this felony. In 1678 no legal suits appear in the court records, whereas 62 persons were convicted, as almost all cases concerned only one or two felons.[48] The problem appears, then, to have been far more widespread than suggested by court rolls.

In Åsum District on Funen, one quarter of all cases during the period 1640-48 concerned forest thefts.[49] And in the estate court of Gessingholm in Jutland, forest theft was the single most frequent offence.[50] A typical case from another part of the country concerned four oak trees and some alder trees all of which had been cut illegally in Dyrehaven north of Copenhagen in 1629.[51] The ranger, Oluf Jørgensen, had followed the wheel tracks until night-fall. He was then in Buddinge Moor. Yet another witness, Laurids Hansen in Buddinge, had observed Jep Olsen drive through the village with a cart-load of alder sticks. And Laurids' hired hand, Peder Andersen, who meanwhile was thrashing in the barn, testified to have witnessed Jep Olsen and his boy taking alder wood from the cart, but he was unable to tell whether it was stolen or nor. So the core of the matter was Jep Olsen's attempt to prove that the wood was his regular allowance.

Local studies of late seventeenth century forest thefts in Falster suggest that petty theft of a mere branch or minor tree was predominant.[52] And most took place in the felon's own woodlot or indeed in the village wood. The offence was so widespread that every single tenant could rightly be accused of it. Geographical and temporal variations, therefore, appear mainly to reflect wavering levels of supervision activity on the part of forest rangers. It appears, then, that the judgement found in both contemporary complaints and in modern historical accounts was true – forest theft was a ubiquitous phenomenon.

Despite the overall preponderance of petty theft, large-scale pillage did occur. This took place, for instance, when islanders organised annual 'attacks' on coastal woods in their vicinity.[53] Furthermore, the sale of lawfully allowed wood also took place, but it is impossible to decide to what extent.[54] Yet towns with no access to woods appear to have been highly dependant both upon imports and upon illegal, domestic deliveries. In 1686 the county governor in Nykøbing on Falster remarked that in that town firewood could only be obtained from thieves.[55]

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48. B. Fritzbøger 1989B, pp. 211 ff.
49. E. Mølgaard & O. Schou Vesterbæk 1987.
50. H. H. Fussing 1934-36, p. 214 ff.
51. Sokkelund herreds tingbøger 1628-30, no. 86.
52. B. Fritzbøger 1989B, pp. 218 f.
53. H. Munk 1955, pp. 250 ff; Kancelliets Brevbøger 2.6.1640.
54. Sokkelund herreds tingbøger 1628, p. 251 (22.4.1630).
55. H. Hjelholt 1935, p. 227; see also Kancelliets Brevbøger 12.10.1605.

According to the forest ordinances, allowances from underwood could be sold legally to third parties. Still this right was restricted by by-laws such as that of Elmelund of 1672 which stated that surplus was first to be offered to other members of the village community[56].

As it was the case in medieval legislation, so it was in both legislation and legal usage of the early modern period: forest theft was considered as different from other kinds of theft. This was the case, by the way, in almost all parts of Europe.[57] The basis of this discrimination was still the work invested in manufactured wood in contrast to the living trees of the forest. Accordingly, a senior civil servant in 1764 'regards it as ordinary theft when someone takes either fuel wood or wheel timber since forest theft is solely that whereby the forest is damaged'.[58] So punitive measures against forest thieves – in this view – are related to the destruction of forest capital rather than to the illicit appropriation of its yield.

Insufficient supervision

Closely connected with the jurisdictional regulation of woodland management was the gradual establishment of forestry offices. In contrast to the peasants carrying out trivial woodland labour as corvée, forest officials with specific obligations had already appeared during the early Middle Ages.[59] One of their primary assignments was forest supervision. So, even though *forestarii* known throughout Europe were primarily attached to the hunt, they were often employed in woodland management as well.[60] The first – and unique – Danish example of salaried forest officials appears in the bishop of Roskilde's Land Register from *c.* 1370. One of his tenants in Herrestrup (Zealand) is noted as paying no rent, 'because he is warding the woods'.[61]

When formerly common woods were allotted, it became practicable to bestow certain supervisory functions upon the respective tenants. So as a general rule the 1680 ordinance (§2) decides that, if a tenant can neither produce a perpetrator nor account for illegal cuttings in his woodlot, then he should himself suffer the punishment. This principle was repeated in 1710 (§1) and it was moreover emphasised that in wood commons the greater landowner held a specific obligation to supervise the usage.

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56. H. H. Jacobsen 1977, p. 72.
57. E.g. C. Emsley 1987, p. 107.
58. H. Stampe 4 (1796), p. 711: 'anseer det for almindeligt Tyverie naar nogen tager enten Favneveed eller Hiultømmer, og Skovtyverie allene er det, hvorved Skoven beskadiges'.
59. J. Buis 1985, p. 224.
60. R. Kiess 1998.
61. Roskildebispens Jordebog *c.* 1370, p. 24: 'quia custodit siluarum'.

Supervision was considered the primary means against forest theft. It was simply the main responsibility of forest rangers to supervise peasant allowances and to make sure that no illegal – i.e. un-*allowed* – cutting took place. So, when theft was discovered, it could have serious repercussions for the supposedly negligent royal servant. According to the early absolutist forest ordinances, the ranger would lose his job or even replace the delinquent in some arbitrary punishment if he was unable to apprehend him.[62]

So forest officials were exposed to accusations. Until the beginning of the eighteenth century, most of them appear to have been ordinary crown tenants who attended some supervisory duties against extra provisions of fuel wood, free timber and exemption from villeinage.[63] Nevertheless, early modern state management was in general heavily affected by corruption and the temptation to abuse access to highly valued resources such as wood was evident.[64] So, when in 1623 a royal chief forest officer was accused of maltreating the tenants and pilfering wood, it was concluded that, if he was proven guilty, then he should hang in a gallows constructed by the very timber that he had appropriated.[65]

Even if without the same vigour, numerous forest officials appear to have been convicted of forest theft – some, conceivably, because they actually had stolen and others, because they were unable to track down the culprit. Others were found guilty of conniving in the offences.

In principle, supervision was strict. It was not only the forest ranger who should oversee the allowance of wood. So should – at least in some cases – a representative appointed among the village community.[66] Likewise, the master of the village guild held certain supervisory duties regarding the wood.[67] In some cases cottagers were explicitly excluded from the office as forest ranger.[68] However, the close association of forest officials with the rural population was considered a major obstacle against effective supervision.

During the seventeenth century, most offices as royal forest ranger were occupied by peasants performing this duty as a sideline.[69] Consequently, they were deeply integrated in the village community and accordingly not necessarily very efficient supervisors. Especially in Jutland, forest officials appear by 1700 to have been run-

62. According to e.g. the 1670-ordinance §§35 and 49, Chronologisk Samling, pp. 9 ff.
63. E.g. Kancelliets Brevbøger 20.11.1586 and 28.3.1635; see also 1670-ordinance §40, Chronologisk Samling, p. 9.
64. E. Holm 1886, pp. 132 ff.
65. Kancelliets Brevbøger 1.3.1623.
66. Danske Vider og Vedtægter 1, p. 268.
67. Danske Vider og Vedtægter 1, pp. 267 f; 4, p. 155.
68. P. Meyer 1949, p. 95.
69. B. Fritzbøger 1989B, pp. 112 ff.

ning virtual gambling houses, through which they became economically dependent on their neighbours.[70]

The 1710 forest ordinance decreed that the crown should pay future forest rangers and that they should have no other employment besides their supervisory duties. Likewise, they should reside in woodland cottages and take no part in the village community. As this scheme was actually effected during the following decades, forest rangers made up the first larger group to experience the solitude that would later follow the total disintegration of village society.

Illegal pasture and pannage

Not surprisingly, those kinds of forestry that were not regulated by physical borders were most disposed to legal conflicts. This certainly applies to the distribution of pannage and pasture rights. So, as in the high Middle Ages, fattening pigs in the woods frequently caused trouble.[71] Pannage was, however, a lucrative resource.[72]

During the fourteenth and fifteenth centuries, lengthy disputes over pannage, for example, poisoned the relations between the town council of Slagelse (Zealand), the nearby Johannite Antvorskov Abbey, the Cistercian Sorø Abbey and their noble neighbours. In 1464 the Supreme Court decided that the bishop should appoint a number of surveyors, who in co-operation with local elders should examine the forests lying between the two monastic institutions, i.e. to the west of Sorø. And 'if they find that the woods are *enemærker* then they should each freely use their own and in those woods which are *fællesskove* so that the woods of both parties lie together and the prior's swine run in the abbot's wood and vice versa they should both customarily exploit swine and *oldengæld*'.[73]

Thirteen years later, the court resolved that the burgers of Slagelse could rightfully have 350 swine in the forests of Antvorskov, and fifteen years later the number was raised to 400.[74] If more pigs were let into the monastery's wood, the prior was permitted the right to collect *oldengæld*. So, the court should decide not only the geographical extent of the woodland property of each party. The very character of ownership – individual or common – was an equally urgent issue.

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70. Dansk skovbrug 1710-33, *passim*.
71. E.g. Repertorium Diplomaticum regni Danici Mediaevalis I, no. 7990 (3.7.1450).
72. E.g. C. H. Brasch 1859, pp. 235 f.
73. De ældste danske Archivregistraturer IV, p. 131 f (1464): ‚thet som the finde att ennemercke schouffue ere, thet brugge huer for sit frj ennemercke, och huilchet thie kunne finde fellig schouffue ere, saa at beggis thieris schouffue løbe sammen, och priors swinn løbe ind paa abbedensz och hansz igien, tha nyde huer sine swin och oldengield som thet sig bør'.
74. Repertorium Diplomaticum regni Danici Mediaevalis II, no. 4015 (23.4.1477), 7257 (1 or 8.12. 1492).

In 1557, the estate *foged* on Tranekær was accused of apprehending pigs that were actually branded in woods belonging to the crown.[75] And in 1592 a royal bailiff and a tenant disagreed over the number of swine which the latter was granted permission to send to the woods.[76]

In a legal case concerning Holløse Fællesskov on Zealand, the proper distribution of pannage rights in a *fællesskov* was conjoined with its allotment. So the provincial court resolved that, if a landlord used more mast than his part allowed, then he could demand to have the wood partitioned according to the Kolding Recess.[77] And as this particular kind of woodland management was almost universally banned, the beating down of acorns and beechnuts did, naturally, occur.[78]

Material penalties or loss of honour

The formal punishment for illegal wood-cutting prescribed by the forest ordinances was not immediately evident (table 3). One fundamental reason for this was the customary distinction between theft (*tyveri*) and open theft (*ran*). The penal responses to the former were far more draconian than to the latter, and according to the circumstances forest theft could be considered as either. Another reason appears to be a declining level of both actual and – by derivation – to some degree, of normative punishments, a decline reflecting the extent of this kind of felony. A peasant undergoing punishment was, after all, of little use as a worker.

Finally, it appears that the 1680 ordinance was simply issued on the accession of a new *overjægermester*, and that no thorough revision took place. So the fines of 1676 were not adopted. Why neither was in the 1687 ordinance, however, remains obscure.

The basic fine of 3 marks was simply adopted from medieval legislation. And so was the ultimate prospect of the hangman. When discussing the 1670 ordinance, the *overjægermester* explicitly rested his penalty suggestions upon the medieval legislation: 'all reference which is made here and in the subsequent articles to the severity of punishments is not too rigorous, since *Jyske Lov* calls illegal cutting theft and gross theft is punished by the gallows'.[79]

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75. Danske Domme 1375-1662 II, no. 246 (19.10.1557).
76. Danske Domme 1375-1662 V, no. 691 (6.12.1592).
77. Danske Domme 1375-1662 II, no. 344 (8.6.1569).
78. Danske Domme 1375-1662 V, no. 621 (17.1.1590); for a similar case, see Herlufsholms Birks Tingbøger no. 187 (1618).
79. Rigsarkivet, Danske Kancelli C 6, 664/1670: 'alt det som om straffens haardhed som her och udi effterfölgende articler formeldes, er iche for hart, ti den Jydske Lov kalder u-lovlig Schouffhug Tiuffveri, och groff tiuffveris straff er galgen'.

Table 3: *Prescribed punishments for illegal cutting.*

	an oak	**a beech**	**coppice**	**2nd time**	**3rd time**
1670	1/2 rdl (rigsdaler)fine and loss of tenancy/property with the option of penal servitude				hanging
1676	10 rdl	8 rdl	4 rdl	double fine and disgrace	
1680	1/2 rdl fine and loss of tenancy/property with the option of penal servitude				hanging
1687	1/2 rdl fine and loss of tenancy/property with the option of penal servitude				hanging
1710	10-20 rdl with the option of prison	6-12 rdl with the option of prison	3-8 rdl with the option of prison	bound to a stake with firewood on the back	penal servitude

Yet in *Danske Lov* of 1683 the discrimination between theft and open theft was not clear. In the case where the yield of a natural resource is taken – against an explicit prohibition at the *ting* – the culpable should be punished for open theft (6-15-14). If, at the other extreme, he flays the bark of an oak tree, removes prepared firewood or timber from the forest floor or is caught cutting trees in the woodlot of another then it is considered a theft (6-15-25/26/27). But, if 'someone goes into the wood of another man and cuts something in which he has no part and puts it on his cart, and a rightful owner apprehends him by the stump or before he reaches the road and takes it from him, then it is not open theft [...] but one should go with him to his house and inspect the booty and get a testimony. If he is then unable to sustain his claim, he should be charged with open theft or theft'.[80]

The distinction between theft and open theft must have followed general rules. A seventeenth century legal dictionary regards it as 'far too obvious [...] what a thief is' but defines open theft as 'an act by which something is taken from someone [...] no matter if is happens by force or not'.[81] Based upon medieval legislation, it further subdivides the latter into open theft of things carried in the hands, of things found

80. 6-15-15: 'Far nogen i anden Mands Skov / og hugger noget der / som hand haver ej selv Lod Udj / og legger det paa sin Vogn / og nogen ret Ejer betræder hannem ved Stubben / eller før end hand kommer til Alvej / og tager det fra hannem / da vorder hand ej derfor Ransmand [...]men mand skal fare til Huus med hannem / og lade Kosterne besigtige med Vidnisbyrd; Og kand hand ej da fange ret Hiemmel dertil, da tiltalis hand for Ran / eller Tyveri'

81. C. Osterssøn Veylle 1665, p. 725: 'Tyff [...] det er alt formeget vitterligt/ hvad Tyff er'; p. 647: 'Ran/ det er en Gierning/ ved hvilcken nogen noget fratagis [...] enten det skeer med Mact eller icke'.

in a house, things taken from the fields, things taken from a dead person, things taken from wayfarers, land apprehended by illicit litigation etc. And according to *Danske Lov*, the distinction between the two was all but obvious. If a traveller feeds his horse with someone else's grain, then he could either be condemned as *tyv* or as *ransmand* (6-17-21). The core issue was, however, that the maximum penalty for theft was death (6-17-38) whereas it was whipping and branding for minor theft (6-17-34).

The law stresses the importance of legal evidence. The allegations of a single witness appear to have been considered too narrow a basis to run a trial. For this, a certified testimony was needed. Still, the capture *in flagranti* mentioned in 6-15-27 does not appear to be of any other nature than the observations of the passer-by of 6-15-15, so the difference between the two seems strange. Except, perhaps, that the axe is quiet in the second case while still in action in the first.

One thing is, however, the punitive measures described in legislation, another things is the reality of punishment. In general, it appears that the level of fines fixed by the ordinances was considered as high. The by-law of Stoense from 1707 proclaims that 'a minor offence can easily cost both honour and temporal welfare'.[82] And when the cutting of a single branch of hazel was sanctioned with a fine of one barrel of flax, it was obviously quite harsh.[83] But as the forest owners were also landlords, they and their tenants had a joint interest in reducing the payment of fines. If the peasants experienced too many economical hardships, they would be unable to run their farm – not to mention to pay their rent.[84]

Consequently, fines appear frequently to have been converted to corporal punishment, which was widely applied to the felony of forest theft. In the noble academy of Sorø, forced labour – namely construction of stonewalls – was used to punish forest thieves.[85] And in general, forest theft and abstention or neglect by villeinage were the two offences most frequently punished by riding the 'wooden horse'.[86] It was basically meant to inflict pain and to dishonour the offender.[87] Still, the number of people being punished in this manner in itself suggests that its preventive qualities were limited.[88] Furthermore, in an environment of expanding *Gutsherrschaft*, the contrast between punitive hard labour and villeinage was not necessarily easy to recognise.[89]

82. Danske Vider og Vedtægter 3, p. 250: 'en ringe forseelse lettelig kand koste ære og timelig velfærd'.
83. G. Knudsen 1931, p. 195.
84. B. Fritzbøger 1989B, pp. 222 ff.
85. G. Olsen 1960, p. 54.
86. G. Olsen 1960, p. 133.
87. G. Olsen 1960, p. 68.
88. B. Fritzbøger 2000A, pp. 273 f.
89. C. Christensen (Hørsholm) 1879, p. 95.

Besides the penal system represented by state and estate, the village community imposed its own fines in order to re-establish order. So the by-law of Ollerup defined a fine of two *sletdaler* for intentional cutting in another's woodlot and for not conserving oak, beech and hazel trees which could turn into timber, but only 8 *skillinger* for taking wood tops for making brooms.[90]

90. H. H. Jacobsen 1977, p. 79.

Chapter 15

Discussion: Forest policies and social disorder

In broad terms, the medieval and early modern development of proprietorship of land and trees can be described as one leading from personal rights based upon relative, physically indefinite shares of the common good to geographically fixed wood parcels. So in some respects a transition was taking place from common to individual property.[1]

Even if it essentially forms an integrated part of medieval social history, we would certainly be mistaken to 'leave politics out' of an investigation into the history of property rights. Appreciation of changing class relations and power balances are crucial to understanding this transformation of woodland property.

Although the concepts were based upon twelfth century roots as well as foreign inspiration, the fifteenth century breakthrough of the overwood-underwood dichotomy appears to result from severe social unrest during that century. As a result of uprisings on Funen in 1440, the common people were coerced into entering into an agreement with king and nobility known as the *Vendsherred* declaration.[2] Here they pledged, among other things, to respect the landlords' *herligheder* regarding fishery and hunt: 'and no peasants or serfs might hunt except the king and his bailiffs, knights and esquires who have hunting rights'.[3] The following year, a major revolt took place in northern Jutland.[4] Apparently, it was provoked by an aggressive manorial (pastoral) expansionism based upon the intensified demand for meat to support the increasing population of north-western Europe.

The local agreements that established the limits of peasant forest management (*Lollands Vilkår* 1446, *Fyns Vedtægt* 1473, *Bornholms Vedtægt* 1499) were all issued in this political context. Hence, they expressed a precarious noble victory over the

1. A. Hoff 1997, p. 282.
2. J. Würtz Sørensen 1983, pp. 60 ff.
3. F. H. Jahn 1835, p. 513: 'oc schule inghe bønder eller wothnethe nogher Jacht holde wthæn koningh oc hans Ubotsæn, Riddere oc Swene, hwer som Jacht hawer'.
4. J. Würtz Sørensen 1983, pp. 72 ff.

peasantry in exactly the same manner as thousands of contemporary *customs*, *coutûmes*, *holzsprake* and *Weistümer* throughout Europe.[5]

By the middle of the fourteenth century, wood from royal forests was confiscated from some Rostock merchants because of the lack of a licence.[6] And inhabitants of highly deforested regions were compelled to import fuel wood and wood materials from distant tracts. In 1475 twenty-five tenants from Klinte and Skamby parishes on the northern coastline of Funen stated that they 'every year used to go to Klakring to buy wood for their fuel and for house construction'.[7] Klakring is situated in eastern Jutland some 25 kilometres from the two parishes.

So by about 1500, woodland generally represented a restricted resource, i.e. a resource, whose use called for attempts at control and regulation. The competition among different social groups sharpened in Denmark[8] as in other parts of Europe.[9] And during this process, the general conditions of all kinds of peasants – whether freeholders or tenants – deteriorated.[10] During the early modern period, essential property rights formulated in the melting pot of late medieval society formed the very foundation of these attempts to control and regulate.

The period 1350-1750 was, therefore, characterised essentially by significant changes in the relation between state and society. The gradual accumulation of legitimate power by the crown produced a society in which everything was regulated in far greater detail than previously. Legislation and legal usage amply demonstrate that the most vital undertaking of the state was, perhaps, to protect the property structure. But since this very structure expressed conflicting rather than concordant views, state supervision in itself noticeably influenced and even from some points of view reduced property rights.

Great changes in the social basis of land ownership followed the Reformation of 1536 and the introduction of absolutist rule in 1660. Even though *enemærke* production was relatively intensified at the expense of peasant farming, tenancy remained the dominant mode of production. But between these two crucial years, the crown was the single greatest landowner and, by its manorial management alone, was able to exert profound influence on rural society. Every village with one or more crown tenants was, so to speak, subjected to a particularly intensive state

5. E.g. A. Timm 1960; Agrarverfassungsverträge 1996; K. Mantel 1965; C. Vigoroux; 1943; B. Bushaway 1982; J. Buis 1985, p. 226.
6. Diplomatarium Danicum 3:4:206 (c. 1354).
7. Repertorium Diplomaticum regni Danici Mediaevalis II, no. 3619 (8.5.1475): 'Aar fra Aar plejer at fare over til Klackerundh og købe der Skov til deres Ildebrand og Husbygning'.
8. M. Hertz 1978, p. 97; E. Porsmose 1981, p. 442.
9. J. Birrell 1987.
10. E. Ulsig 1994, p. 113.

supervision that enhanced the implementation of general policies. Even though it remained *fællesskov*, if a village wood was made use of, this was far more likely to be observed if the crown was represented among the owners.

Concerning forest property rights, the most notable development in the four hundred years period was the almost total dissolution of overwood commonage. From the early sixteenth century attempts were made to instigate an allotment of those overwoods that were already considered the privilege of the land-owning upper class. More than hundred years went by before the process was completed.

As an effect of the overwood allotment, new landscape boundaries were created or, to some indefinite extent, possibly re-created after the demographic breakdown of the fourteenth century. Based upon the memory of old folks and (to an increasing degree) written confirmation, inter-village limits were demarcated by means of sticks, stones and blazes in the bark of old trees. And in similar manner, intra-village woodlots were separated at a farm level or more atypically at estate level, so that every participant in the former *fællesskov* had his part of the overwood located physically in one, two or more places.

Yet none of these landscape boundaries was absolute. They concerned but one layer of natural resources, namely the large trees particularly protected as overwood. To some extent, the underwood might have followed the partition of the overwood. But apart from the creation of wood closes around manors or single farms or cottages, wood pasture remained common.

So the horizontal commonage between tenant farms employing the same grounds for pasture continued throughout the period. And so did the vertical commonage between the tenant and his landlord that was reflected in the overwood-underwood division. Even if government and seigneurial intervention in underwood management did increase significantly through the seventeenth century, it maintained for the most part rustic in character. The underwood formed the basis of largely sustainable coppice management aimed at fuel wood, wattle and minor timber.

In evident disagreement with the intentions upon which the system was founded, the social division of forest management in this period caused a general conversion of overwood to underwood. So the balance between lord and peasant was significantly pushed to the benefit of the latter, causing the striking disparity between the numerous complaints about deforestation and the excessive yet continuous consumption of firewood.[11]

Alongside some undeniable local deforestation, the loss of the provinces east of the Sound in 1660 must be considered as the principal reason for escalating government intervention in and control over both royal and private woods. Until this year legislation mainly focused upon the establishment of individual woodlots and their

11. F. Heide 1921, p. 27.

protection against offenders. But woodland preservation in general and the creation of royal *vildtbaner* in particular did also attract considerable attention.

The intense and repeated attempts to regulate forest management during early absolutism were *inter alia* characterised by an increasing intervention in private forestry. Clearing was prohibited and in general terms private owners were induced to propagate their woods. The most significant element in late seventeenth and early eighteenth century legislation, however, was the effort to curb forest theft. In practice, this was a struggle against customary peasant woodland management: a clash of property rights perceptions.

By the beginning of the period, tenants kept the right to employ the underwood and freeholders managed their woodlots unrestrained. But as times went by and woods diminished, the allowance system developed within overwood management was extended still further. And by 1700 all kinds of forest usage had to be sanctioned either by the landlord (fuel wood, timber, wickers, peat) or by the village community (pasture, wickers).

Government and seigneurial intervention were met by the means typical for most pre-capitalist peasant resistance: civil disobedience. So in the legal discourse of landowners, early modern forestry suffered from massive crime. But in general the peasantry – disregarding restrictive legislation – only appears to have upheld traditional forms of woodland management. And this 'crime' was so widespread, that it included virtually everybody.

Apart from an obvious desire to sustain a precious natural resource, this might be the very core embedded in absolutist forest policy. The fact is that by means of forest laws the great majority of the rural population was criminalized and, thus, disciplined. As phrased by the German historian Joachim Allmann, 'forest regulation has less to do with forest than with regulation'.[12]

If authorities for some reason or other wanted to, they could always detain a person for stealing wood in the forest. In this way Denmark could continue formally to represent – in the words of Hans Fussing during the German occupation of the 1940's – a society 'based upon the law'[13], while officials of state and estate could, in fact, carry out a subtle repression unimpeded. From the opposite point of view, forest law required frequent reiteration since, as observed by an eighteenth century writer, 'we surely do have the finest forest ordinances, but does one let the cat out of the bag by saying that they are just observed in a few places'.[14]

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12. J. Allmann 1989, p. 346: 'Forstordnungen haben weniger mit Forst als mit Ordnung zu tun'.
13. H. H. Fussing 1942, p. 456.
14. P. C. Stenersen 1758, p. 323: 'Vi har de herligste skovforordninger, men mon man fortaler sig, om man siger, at de kun på få steder efterleves?'

Part IV

Abolishing the commons 1750-1830

Chapter 16
Introduction

Economical fluctuations and reform legislation

From the 1740's, improving price relations of the European market brought the economic crisis of the foregoing decade to an end.[1] At the same time, new forceful waves of recurring cattle plagues swept through northern Europe and revealed some of the major malfunctions of customary open-field agriculture. Common pasture rendered it almost impossible to avoid an uncontrolled dissemination of infections. The economic policies of an ever-increasing state apparatus progressively focused upon the structural foundations of a national economy that was basically rural. During the following decades, comprehensive reform legislation contributed to the re-moulding of Danish society.

In broad outlines, the reform laws could be collected into at least two main groups: one dealing with the material foundation of society and one with its social superstructure. To the former belonged primarily legislation on enclosure dating from 1758-60, 1776 and 1781 as well as an elaborate ordinance on the fences surrounding the newly enclosed lands from 1794 and the momentous Forest Conservation Act of 1805 (p. •••). Among the latter were attempts to restrain villeinage in 1771 and 1799, to endorse the transition from tenancy to freehold in 1769, to abolish *stavnsbåndet* in 1788, to legislate on reduction and conversion of the tithe and, finally, a law on compulsory education of all children in 1814.

The reform policy varied according to changes in the government. Notable reform initiatives took form during the 1750's and early 60's. During the first years of the 1770's, they were enhanced during Johan Friedrich Struensee's radical *de facto* autocracy. With his political fall (and subsequent decapitation) in 1772, parts of the reform process came to a halt. In 1784 other representatives of the aristocracy, who at some points were more innovative, replaced the government of Ove Høegh-Guldberg. Still, the difference between the pre- and post-1784 governments can be characterised as one of shades than as a marked distinction between conservatism and radicalism. For all that those shades could be substantial.

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1. The following overview is mainly based upon C. Bjørn 1977 and 1990, L. Dombernowsky 1988, O. Feldbæk 1982, 1989 and 1993, S. P. Jensen 1987 and 1991, H. C. Johansen 1979, Konjunkturer og afgifter and F. Skrubbeltrang 1978.

The formation of a new society

In a Danish context, there has been fierce debate as to whether Land Reforms were initiated from above (by legislation) or from below (by local initiatives).[2] And further, whether the dispersal of reform ideas among progressive landlords took the form of disseminated 'parachute attacks' or as a slow, organic diffusion.[3] Distinctions should, however, clearly be made according to which kinds of change are in focus. A disparate distribution based upon social networks within the landowning upper-class would naturally characterise reforms associated with the seigneurial economy. Whereas changes in peasant economies were likely to spread by diffusion. Finally, it has been stressed that almost all aspects of the reform movement were based upon ideals and technology imported from abroad.[4] It is, for example, noteworthy that in general reforms took place earlier in the duchies of Schleswig and Holstein than in the Danish kingdom.[5]

The debate has been characterised by rather imprecise definitions of the very concept 'agrarian reforms'. To some authors, the term primarily designates state legislation and its consequences. To others, it includes all aspects of societal, technological and cultural change. In the following pages, the latter (inclusive) conception is applied. Crown land management, state legislation as well as private innovations are considered to represent the reform movement. And the reforms are regarded as affecting social relations, modes of natural resource exploitation and the consequential re-formation of the cultural landscape as well as the novel perception of both landscapes and property.

A further controversy surrounds the actual objective and impact of state regulation and reform legislation. Allegedly, the reforms were implemented 'thanks to the passionate interest and professional skill of the leaders'.[6] And compared with other European countries, it is evident that the Danish state played an outstanding part in the reform process.[7] But firstly, its true purposes might have been insidious and other than those declared in public. And secondly, later historians could readily have overestimated the actual outcome of the comprehensive state intervention.

Jens Holmgaard was the first to emphasise the fiscal motives behind the forceful government endeavour to enhance agricultural productivity be means of structural reforms, i.e. by dismantling customary common rights and promoting freehold.[8]

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2. O. Feldbæk 1989; A. Raaschou-Nielsen 1990.
3. D. C. Christensen 1996, pp. 569 ff; O. Feldbæk 1997.
4. D. C. Christensen 1996, pp. 555 ff.
5. J. Hvidtfeldt 1963.
6. A. Linvald 1923, p. 227: 'Takket være de Styrendes brændende Interesse og saglige Dygtighed'.
7. T. Munck 2000, p. 180.
8. J. Holmgaard 1954.

Lately, Thorkild Kjærgaard has highlighted the power politics obliquely integrated in the quest for reform: the gradual increase of state intervention in society. In his eyes, the agrarian reforms first and foremost encapsulated the joint victory of state and peasantry over the landowning class and the cottagers.[9] The enormous expansion of the state apparatus is amply reflected in the fact that from 1730 to 1800, the annual quantity of legal texts issued by the government more than doubled.[10]

Regarding the economic growth of the post-reform period, Kjærgaard comments that 'rather than look for a positive connection between the agrarian reforms and growth in agriculture one may ask whether it is possible to observe a negative connection between these reforms and growth, that is, whether growth in the agricultural sector could have been greater without them. The answer is probably in the affirmative'.[11]

In a short temporal scope it is correct that no distinct economic prosperity can be detected following the enclosure movement in regional investigations.[12] But perceived in a nineteenth century perspective, it remains irrefutable that the structural reforms enabled those technological innovations which resulted in the quite astonishing increase in productivity.[13]

During the reform process, the essential foundation of tenancy and property rights changed dramatically. In general, the standing of tenants in regard to their use right was improved. In 1719 it was prescribed that the conditions of each tenancy should be fixed in writing. And throughout the century it became ever more common for sons to receive the tenancy after their father.[14] The most manifest change in the seigneurial relation between lord and peasant was, however, the gradual prevalence of freehold.

During the 1750's, a number of tenant farms belonging to private estates in Jutland were sold as freehold.[15] Attempts were made to curb this development, but soon the crown followed in the same direction. Due to severe financial adversity, it was decided in 1764 to dispose of the substantial royal cavalry districts.[16] This resolution was, in fact, a natural consequence of that gradual transition from a land-based to tax-based financial system, which characterised the absolutist era.

During the years that followed, peasant holdings and the home farms of former crown lands were sold one by one. Yet in general this transaction took two different forms. In eastern Denmark, the majority were sold as complete estates consisting of

9. T. Kjærgaard 1994A, pp. 198 ff.
10. T. Kjærgaard 1994A, p. 230.
11. T. Kjærgaard 1994A, pp. 249 f.
12. B. Johansen 1994.
13. D. Grigg 1982, p. 130; S. P. Jensen 1992.
14. F. Skrubbeltrang 1978, pp. 339 ff.
15. S. Jensen 1950, p. 16.
16. K.-E. Frandsen 1992.

a manor surrounded by tenancies. In Jutland, on the other hand, most former tenant farms were sold to the peasants as freehold.

Shortly after an auction had been published, a sale in southern Zealand was aborted in 1768.[17] This particular area, it was decided, should serve as a large scale experimental station in regard to land reforms. So villages were enclosed and new field systems introduced. But the basic structural setting – including property and common rights – remained unaltered. And in 1774, the experiments were abolished for political reasons and the land finally sold.

The auctions in 1774 marked the conclusion of the first phase in reformative crown land management.[18] No major wave of sales to freehold followed the abalienation of crown lands and the Ordinance of 1769 that attempted to regulate the new situation and to induce its persistence had little results.[19] Still, with some delay the crown continued its reformative politics in the only remaining crown lands, those in northern Zealand.

In 1784 what was later called the 'Little Commission' produced a scheme for structural reforms in Frederiksborg and Kronborg counties. Its main concern was enclosure and the transition from tenancy not to actual freehold but to a condition labelled *arvefæste*. Its status comprised a number of improvements as compared with customary tenancy (*fæste*).[20] The tenant had to comply with the obligations mentioned in the tenancy contract, i.e. a fixed level of labour services, taxes and annual rents. Even though villeinage was converted to a money rent, certain types of labour had to be performed, namely mending roads, fences, waterways etc. as well as certain sorts of cartage. In contrast, he was allowed to transfer the farm to whomsoever he might wish – as long as the lord approved. He was equally entitled to divide the holding among his children.

In fact, enclosure and other structural reforms had by then been going on for decades on several private estates, the most renowned examples being the reforms in Bregentved and Bernstorff in the 1760's. So the crown did definitely not initiate the enclosure process. Still, the enclosed farms that in many cases were moved from their original location in the village in order to be placed in their new, integrated landed possession were not necessarily transformed to freehold. The transition from tenancy to freehold formed an independent process resting largely on interest rates and economic prospects. So by 1830 approximately one third of the entire peasant *hartkorn* (i.e. excluding manors) consisted of tenancies.[21] Furthermore, one quarter of these holdings still performed villeinage for the lord.

17. A. Linvald 1905-11; H. Larsen 1928.
18. O. Feldbæk 1982, p. 162.
19. S. Jensen 1950, pp. 32 ff.
20. S. Jensen 1950, pp. 20 f; P. V. Christensen 1976.
21. C. Bjørn 1988, p. 17, 27.

The actual content of the freehold property rights attained by the peasantry was highly variable.[22] In some cases, the customary division in *skyld* and *herlighed* continued so that the crown *inter alia* reserved hunting rights and villeinage. In others, peasants received 'full property rights' to their holding. As the transition from tenancy to freehold presupposed credit facilities, state funds made a major contribution.[23]

In both private estates and crown lands, the enclosure of the arable simply consisted in a re-division of village lands aimed at terminating the open field system. In some cases – it is uncertain how many – the process consisted of two phases. First a partial enclosure was conducted on an estate level,[24] followed by a redistribution of the land at the farm level. In the second phase (which did not necessarily follow immediately after the first) each farm preferably received one integrated parcel according to their previous part of the village, as gauged in *tønder hartkorn*. In reality, one or more parcels in meadows and peat bogs would often supplement a major block of arable. The outcome was a notable amalgamation of farmlands.

The enclosure movement was, however, not the only factor impressing the cultural landscape of the early nineteenth century. Technological change in terms of tools and crops produced a far more homogeneous and mono-functional landscape than before. During the decades succeeding enclosure, fens were ditched, shrubs cleared, stones removed from fields and meadows and the entire farm inserted in a geometrical network of field-fences and drains. The relative impact of the arable increased conspicuously, and meanwhile those parts of the cultural landscape previously employed chiefly for animal husbandry declined. With the advent of new multiple-field systems, the use of stall-fodder suddenly became possible during large parts of the year considerably reducing the traditional requirement for extensive pastures.

Demographic growth instigated a notable settlement expansion and diffusion during the first decades of the nineteenth century. By 1730, approximately 735 manors existed. And since the number of tenant farms could neither be reduced nor increased legally,[25] it remained at a level comparable to that of the 1680's, i.e. roughly 50,000. Yet during the hundred years period to 1830, Danish society experienced a demographic increase from approximately 700,000 in 1730 to 1.2 millions.[26] Approximately eight out of ten people lived in the countryside, so a settlement expansion was unavoidable.

The population increase primarily produced an expanding group of unproper-

22. S. Jensen 1950, pp. 23 ff.
23. S. Jensen 1950, pp. 36 ff.
24. P. Korsgaard 2000.
25. G. Olsen 1957, pp. 118 ff.
26. O. Andersen 1972.

tied farm hands. By legislation, the division of farms (by inheritance or parcelling out) was restricted. According to an ordinance of 1810, subdivisions of farms should be confirmed by the *Rentekammer*. And in 1819, minimum limits for the parcels resulting from such subdivisions were stipulated. Furthermore, the following year landlords were ordered to install a new tenant within a year after the departure of the former.

The agrarian reforms without doubt demonstrated the victory of the farmers. But in general, cottagers experienced a development which was relatively gentle as compared with that taking place in other parts of Europe. By the enclosure, approximately two thirds of them had received a minor lot to cultivate.[27] But their post-reform standing was highly dependent on local circumstances.[28] It even appears, that the position of the unpropertied class was better in the context of a sustained seigneurial culture than in areas dominated by freehold farmers.[29]

The transition from tenancy to freehold – and more modestly the detailed regulation of tenant standings – embodied the gradual eradication of the manorial system. During the first half of the nineteenth century, market relations irrevocably replaced seigneurial dependence as the basic mode of social organisation and economic exploitation. Feudalism was slowly coming to its end.

'Oh! What a century, this eighteenth!'

A multitude of partially interrelated issues form the background to the restructuring of Danish society.[30] But as Falbe-Hansen puts it, 'the prosperity of rural society after 1788 was not just a consequence of both reforms and increasing prices; the fortunate carrying out of reforms was largely a result of the rising prices of agricultural products'.[31] However, the economic incentive did also involve certain political aspects. One could, for example, argue that reforms aiming at increasing productivity formed an essential part of all attempts to expand the state's tax revenue.[32]

Late eighteenth century production statistics are grossly inaccurate.[33] But the economy indisputably did flourish during the second half of that century. So the

27. H. C. Johansen 1979, p. 125.
28. A. Vægter Nielsen 1991.
29. G. Banggaard 1998.
30. J. Holmgaard 1977 (1990).
31. V. Falbe Hansen 1889 I, p. 86: 'Det er altsaa ikke blot saa, at den Fremgang, der fandt sted i Landbruget efter 1788, skyldes baade Reformerne og Prisstigningen; men det er tillige saa, at selve Reformernes lykkelige Gjennemførelse for en meget stor del skylds de stigende priser paa Landprodukter'.
32. E.g. J. Holmgaard 1954.
33. D. C. Christensen 1996, pp. 749 ff.

economic setting was ideal to implement structural innovations in order to improve productivity and yield. And technological and social reforms were, naturally, both elements in this endeavour. In 1784 the landlord and politician, Tyge Rothe, noted that 'nobody will deny that during the last twenty years more agricultural improvements have taken place than in the previous fifty years; could one select a more reasonable explanation for this than the higher price of the products?'.[34]

Still, even though the economic situation formed an indispensable prerequisite for the carrying out of the manifold transformations summed up by the concept 'land reforms', it cannot serve as a sufficient explanation. The 'enlightenment' formed another significant yet elusive precondition for that European movement of which developments in Denmark formed a part. As the concept appears to be highly complex and frequently to comprise opposing ideas, its very core could (in Thomas Munck's words) be described as 'the process of discovery, the active and critical engagement of the individual […] not necessarily the end result'.[35]

In a Danish context, the basic elements of enlightened reformism appear to have been Natural Law, German Cameralism, the agricultural innovations of Great Britain but only marginally French Physiocratism.[36] It has been argued that the latter did indeed play a positive role in the reform environment of Denmark, but with little or no substantiation. During the major part of the eighteenth century, Mercantilistic economic theory predominated.

But with the issue of a Customs Ordinance based upon the idea of free trade in 1797, the Mercantilistic era finally expired.[37] On a long-term view, Adam Smith's 'Inquiry' received unsurpassed attention among Danish reformers, but the liberal thoughts of Scottish natural philosophers proved scarcely compatible with Danish absolutism. This became evident in the early nineteenth century policy towards rural crafts.[38]

Most important, however, appears to have been a remarkably optimistic view of both the present and the future. The frequently 'pompous and tasteless'[39] Tyge Rothe expressed his pleasure and pride 'because I am a European and a Man of the eighteenth century. Everywhere I find proof that we deserve a pre-eminent reputation for our knowledge […] our legislation, our customs, our conduct towards the female gender, the freedom of our souls. Oh! What a century, this eighteenth, now

34. T. Rothe 1784, p. 428: 'Ingen vil negte, at i de sidst henløbne 20 Aar ere fleere Forbedringer skete hos os i Agerdyrkningen end i forrige 50 Aar; nu angive man nogen rimelig Aarsag hertil, naar det ey skal være Produkternes høyere Priis?'
35. T. Munck 2000, p. 7.
36. J. Hvidtfeldt 1963, pp. 23 ff.
37. K. Glamann 1983, p. 12.
38. S. Henningsen 1944, especially pp. 96 ff.

expiring! Never before did the earth experience such brightness'.[40] A sentiment which might, in fact, on a psychological level embrace all those individual aspects from economic prosperity to liberal political thinking which have traditionally been employed to explain the reforms.[41]

This new mentality, however, neither ripened nor spread in a void. The eighteenth century was characterised by the formation of a universal European bourgeois 'public sphere' facilitating the unimpeded circulation of both ideological inspiration and practical propositions.[42] From the beginning to the end of the century, the publication of agricultural textbooks increased by approximately a factor of one hundred.[43] And by the international transition of innovative ideas and conceptions, they were accommodated to a specific national setting.[44]

A struggle against common rights

The nucleus of the agrarian reform movement was the elimination of common rights. The redistribution of natural resources resulting in well-integrated holdings was the primary concern of most reformers. And a new and effective means in their endeavour was the printed word. Since the 1750's an ever-wider range of economic magazines were published in the kingdom of Denmark. And numerous authors scorned the ineffectiveness of commonage. The minister, J. D. W. Westenholz, described it as 'a fatiguing illness for a country'.[45]

Common field agriculture was, however, not only reproached from a utilitarian perspective. The very core of village communalism – interdependence and solidarity – was perceived as the basis of immoral behaviour. In 1791 the bailiff on Holsteinborg estate complained that 'as long as they remain or want to remain in common, frequent gatherings will cause boozing and brawl'.[46] And at the same time his colleague on Skjern in Jutland reasoned that, if the village was enclosed, then they

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39. According to E. Holm 1888, p. 65: 'opstyltet og smagløs'
40. Cited from J. Leisner 1988, p. 40: ' fordi jeg er en europæer og en det 18. århundredes mand, over alt finder jeg bevis der på, at den ypperste hæder tilkommer os ved vor videnskab [...] ved vor lovgivning, vore sæder, vor adfærd mod kvindekønnet, vore sjæles frihed. Jo, hvilket århundrede er ikke dette 18., der nu løber hen. Så lyst var der aldrig på jorden!'
41. R. Koselleck 1988.
42. H. C. Johansen 1979, pp. 274 f; P. Wagner 1994; T. Munck 2000, pp. 14 ff.
43. T. Kjærgaard 1983, p. 93.
44. T. Munck 2000, p. 4.
45. J. D. W. Westenholz: Prisskrift om Folkemængden i Bondestanden, Copenhagen 1772, cited from K.-E. Frandsen 1983, un-paginated foreword: 'en tærende sygdom for et land'.
46. Storlandbrug under omformning, p. 89: 'Saalænge de ligger eller bliver liggende i fælledskab vil der blandt dem […] stædse blive sammenkomst og herved forvoldes som oftets fylderie, klammerie'.

would 'avoid and impede the communal concourse of the Tindbæk farmers by which time is wasted far more than permissible and sometimes some pots of spirits are drunk'.[47]

Several authors have expressed the teleological view that the reform movement was inevitable and innately reasonable.[48] One of the more conspicuous recent examples is the view expressed by Dan C. Christensen that open field agriculture was 'inflexible', characterised by 'low productivity' and that 'the village community reduced the personal rights of disposal to a mere nullity'.[49] Just as Hugo Matthiessen half a century before concluded about the common rights to woodland resources that 'such confusion – naturally – had to be paralysing'.[50]

In his nearly contemporaneous printed description of the enclosure on Bernstorf of 1774, Torkel Baden concludes that 'everyone, even the most short-sighted farmer, nowadays recognizes the damaging effects of common rights'.[51] Still, at this point he jumped to conclusions. A wide range of evidence suggests rather that the peasantry was, in general, opposed to any modification of customary village life at all. Not surprisingly, many tenants were reluctant to adapt to the economic uncertainty of freehold.[52] And the same goes for enclosure and leaving the village to move to an outlying farm.[53] Even the introduction of new crops or tools was frequently resisted.

In 1743 Hans Rosborg of Frisholt told how he 'had attempted in various ways to bring into the villages labourers from other parts of my estate. When they refused to follow the resolve of the villagers or acted strangely, then they were disliked and harassed by the villagers. Especially in such ways that I should either allow them to conform with old custom and habits or remove them to their places of origin if I did not want to see the strangers ruined'.[54] This was exactly the kind of conservatism that the revolutionary aristocrats were up against. According to one of the most

47. Cited from K. Thingholm Kristensen 1985, p. 10: 'Tindbæk gårdmænds alt for megen sammengang til vidje og vedtægt, hvorved tiden spildes mere end ske burde, og undertiden nogle potter brændevin drikkes, blev og hermed undgået'.
48. E.g. F. Vinding Kruse 1929, p. 239.
49. D. C. Christensen 1996, pp. 560 f: 'landsbyfællesskabet, som reducerede den personlige dispositionsfrihed til en nullitet'.
50. H. Matthiessen 1942, p. 18: 'En saadan Forvirring maatte naturligvis virke lammende'.
51. Cited from E. Holm 1888, p. 35: 'enhver indtil den mest kortsynede Landmand indser nu omstunder Fællesskabets skadelige Virkninger'.
52. S. Jensen 1950, p. 34.
53. E.g. E. Rasmussen Søkilde 1875, p. 87; E. Holm 1888, pp. 39 ff; H. Nielsen 1954-56, pp 60 ff.
54. Rigsarkivet, Danske Kancelli D 102b: 'Jeg har proberet på mange måder indført i bondebyer fremmede karle fra andet mit gods. Når de ikke ville følge bymændenes vilje eller om de foretog dem uden sædvanlige forretninger, blev de hadet og efterstræbt af bymændene. Sær udi en og sær udi anden måde, at om jeg ikke ville se de fremmede ruineret, måtte jeg enten tillade dem at følge bymændenes gamle skik og sædvane eller forflytte de nye til deres fødesteder'.

prominent, Johan Ludvig Reventlow to Brahetrolleborg, the innovative peasant 'is deprived of his desire to initiate something, for by doing so he usually only meets envy from his neighbours and hatred as one who wishes to differ from ancient custom'.[55]

The issue here is obviously the 'ordinary peasant', a conception that during the last decades has been considered meticulously in historical and anthropological literature starting with Eric Wolf's now classical treatment.[56] The main query has been – to phrase it squarely – whether this hypothetical creature was a conservative traditionalist or an innovative *homo politicus*.

The first view is represented in numerous older surveys,[57] whereas the politically prudent eighteenth century peasant has been depicted by Claus Bjørn, amongst others.[58] He gives various examples of peasant protest and resistance directed at well-defined political aims. On the other hand, Peter Henningsen has argued that the fundamental conception of wealth and economic prosperity predisposed the limits of peasant entrepreneurship.[59] He founds this upon the conclusion by George M. Foster (derived from field work in Mexico 1958-63) that to peasant societies the appropriation of natural resources constitutes a zero sum game.[60] It is, therefore, only possible to enlarge one's own share by reducing that of others. This basic conception coupled with an alleged lack of capability to handle abstract, categorical reasoning explains (according to Henningsen) the prevalence of a conservative, unenlightened and tradition-bound Danish eighteenth century peasant culture.

Still, the whole idea of attributing to a social group consisting of approximately four fifths of the entire population some distinct, all-inclusive characteristics appears to make little sense. And to deny them the capability to conceive of their social and natural environment in terms of abstract categories is even less founded. So, just as a great number of peasants were evidently opposed to reforms, reformist members of the rural population are by no means exceptional. But, as has been pointed out by Palle Christiansen, the question of the 'nature of the peasantry' is obviously too narrowly posed. In his thorough investigation of the Giesegård estate he consequently distinguishes between two ideal peasant types: the 'ambitious' and the 'fatalistic'.[61]

When the rumours about the preliminary reforms in northern Zealand reached Falster in 1785, the tenants here ostensibly yearned to become freeholders them-

55. Indberetninger om kornavlen, p. 117: 'Ham betages lysten til at begynde på noget, så meget mere siden han derved gemenligen kun tilvejebringer sig hans medbeboeres misundelse og had som den, der vil vige fra deres gamle sædvaner'.
56. E. R. Wolf 1966.
57. E.g. J. A. Fridericia 1888, p. 38.
58. C. Bjørn 1979 and 1981; see also L. Dombernowsky 1985.
59. P. Henningsen 2000.
60. G. M. Foster 1965, p. 296.
61. P. O. Christiansen 1996, pp. 175 ff.

selves.[62] On the Hvedholm estate, the tenants urgently demanded to have their common wood partitioned among them.[63] And in Ribe County the peasants in fact implemented the enclosure of several villages.[64]

Still, contemporary observers habitually considered peasant conservatism as a major barrier against structural reforms. The double implementation of enclosure and freehold was, in fact, seen as the pre-eminent means to encourage the rural population to adopt agrarian innovations to augment productivity. 'Selfishness' was and still is the key conception of economic liberalism and it was based, among other things, upon that new recognition of the peasantry which developed during the late eighteenth century,[65] that differences among human beings originate from particular circumstances and the social setting rather than from genetics. Still, some conservative authors like Esaias Fleischer argued that an improvement of the innately low moral state of the peasantry had to forestall freedom and freehold.[66]

Fleischer represented that considerable part of the articulate upper-class who hesitated to greet all reform initiatives taken by the government. So, clearly, members of the peasantry were not alone in opposing major changes in rural society. In 1790 a group of landowners primarily from Jutland openly rejected the reform policy of the government.[67] Among lords and peasants alike, then, attitudes towards reforms were ambivalent regardless of whether the final outcome was the dissolution of the manorial system, the reinforcement of the central state apparatus or the creation of the nineteenth century class of self-confident freeholders. Some eagerly took part in the movement; others hesitated or even contested it.

Until the eighteenth century, Danish jurisprudence was mainly a matter of practical legal usage. Some early modern scholars were, however, engaged in theoretical legal matters, but most of them were heavily influenced by Roman Law as it had been introduced through the theologian Philip Melanchton.[68]

As early as in 1562 – before Grotius that is – the Danish theologian Niels Hemmingsen wrote a thesis on natural law. And, like Grotius, he recognised the existence of natural law without divine revelation.[69] In 1610 Leonhard Metzner produced a thesis on property rights at the University influenced by natural law. But, in general,

62. Storlandbrug under omformning, p. 186.
63. Rigsarkivet, Rentekammeret 3322.400 (1806).
64. V. Andersen 1973, pp. 252 ff.
65. A. Olsen 1939, pp. 125 ff.
66. A. Olsen 1939, p. 120.
67. C. Bjørn 1995, pp. 100 ff.
68. D. Tamm 1992, p. 27.
69. D. Tamm 1992, p. 30, 54.

such ideas did not reach Denmark until *c.* 1700. And before this time, Danish legal usage remained largely unaffected by foreign jurisprudence.[70]

With the idea of Natural Law followed that of Natural Property. So, when Lauritz Nørregaard published a book on the issue in 1776 largely based upon the thoughts of the German jurisprudent Christian Wolf, it inevitably included a chapter on 'The natural property rights'.[71] And from this eighteenth century beginning, juridical explorations of the property rights history of Denmark were predisposed towards the idea of total ownership (*ius in re*).[72] In fact, M. H. Borneman was the first who formulated the idea of 'possession' as a specific kind of property at the beginning of the nineteenth century.[73]

Forest ownership has received little attention from jurisprudence. But it appears that tenant underwood and pasture rights in legal terms were, in general, regarded as a positive easement (*servitut*).[74] Yet a textbook on this subject from 1836 explicitly considered both underwood and wood pasture as parts of the property right – not as an easement.[75] So, even though the reform movement made an endeavour to establish 'total ownership', the concepts remained nebulous.

Forests under pressure

The extensive reform literature printed in Denmark comprised numerous suggestions for the improvement of forest management. And although the explanations did vary, they were all based on the assumption that total deforestation was imminent.

As the primary cause of deforestation, Jørgen Hvas in 1761 mentions common rights and negligence concerning the time-honoured injunction to plant willows near farm-houses. 'In order to conserve and procreate the still existing woods it is my humble suggestion that as a principal means and '*causa sine qua non*' common rights should be abolished. For by doing so, an intrinsic carefulness will emerge and every honest man who knows what is his will have the opportunity to conserve and improve his forests'.[76] In contrast, the author of the magazine in which Jørgen Hvass

70. T. Nielsen 1951, p. 25, 41.
71. D. Tamm 1996, p. 194.
72. O. Fenger et al. 1982, p. 167.
73. A. Aagesen 1872, p. 55 f (note).
74. J. Mandix 1813, p. 146.
75. C. Algreen-Ussing 1836, p. 348.
76. J. Hvass 1761: 'Til de i behold værende skoves conservation og fremvækst er da mit underdanige forslag, at som et hovedmiddel og cause sine qua non må foranstaltes fællesskabets afskaffelse; thi derved indfinder der sig naturlig omhyggelighed, og da får enhver ærlig mand, som ved hvad sit er, lejlighed til at frede og forbedre sine skove'.

published his ideas noted that as long as the peasant was conferred property rights to the underwood, the forest as a whole would prosper. For 'when the peasant regards as alien property the underwood – especially ash, alder, rowan, hazel and similar bushes – that grows on the ground for which he pays his taxes and reduces his pasture, then it is to be expected that he scorns it as adverse and injurious for him. If it were his property, he would soon conserve and protect it better than any ranger'.[77]

More frequently, it was the owner of the overwood who complained about the detrimental conduct of browsing cattle and coppicing peasants. As noted by the owner of Hundstrup estate (Funen), 'if a peasant in a forest that he does not own has access to coppice and to let his cattle eat some grass – if there is any – or else some sprouts by leafing, then the young plants are prohibited from growing since the peasant suffers no loss'.[78]

But the overwood was not the only liable victim of common forest rights. In 1785 the minister in Espe (Funen) explained that in Kirkeskoven he had both underwood and grazing rights.[79] Yet it did him little good since the overwood owned by Fjellebro estate overshadowed it. And as he held the pasture, he was even obliged to maintain the woodland fences.

So opinions differed as to how to encourage peasants to propagate their woodlots. To avoid future wood deficiency, 'there is no other means left to us than by diligence and thrift to prevent the apprehended calamity'.[80] The introduction of freehold and the lucid physical distribution of natural resources were clearly considered to be important means to promote the two. In 1760 another author even described how its transfer from the crown to count Frijs earlier in the century had saved Borum Skov near Århus;[81] firstly because he punished forest thieves severely and secondly, because he encouraged the tenants to conserve and propagate their individual woodlots.

It was evident to most observers that prosperous silviculture implied at least temporal conservation against browsing and grazing livestock. In 1760 Stokkebjerg Skov

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77. J. Hvass 1761: 'Men når bonden anser som fremmed gods den underskov, særdeles de aske, el, røn, hassel og deslige buske, som ville opvokse på den grund, han giver skat af, og altså betager ham sin græsning, da er det venteligt at han hader dette fremmede og sig skadelige. Blev dette hans ejendom, da skulle man snart se, han fredede og forsvarede det bedre end alle skovfogder'.
78. Rigsarkivet, Rentekammeret 2485.12 (1785): 'Thi har bonden adgang i skoven, han ikke ejer, til at hugge gærdsel tillige at lade sine kreaturer indgå til at pille græs, hvor noget er, og om ikke andet er så dog unge skud, når skoven udbryder, så formenes unge planter derved at fremkomme, da bonden ikke taber noget derved'.
79. Rigsarkivet, Rentekammeret 2485.12 (1785).
80. Anonymous 1757 B: 'Der er da intet middel tilbage for os, end ved flid og sparsommelighed at forebygge det befrygtede onde'.
81. Tidernes Mangel 1760.

was, for example, referred to as a place where conservation had resulted in abundant re-growth.[82]

In general, forest theft was considered as detrimental as blizzards and browsing cattle.[83] And apparently the extent of the problem was considerable. In 1757 an anonymous commentator noted that 'in this region, people consider that stealing wood is not covered by the seventh commandment'.[84] And the minister in Tølløse added that 'they know that if caught they have nothing else than their back to forfeit, and to that they are accustomed as soldiers since their adolescence'.[85] He consequently disdained the seigneurial employment of punishment and other disciplinary measures as unsuited for encouraging the peasantry. They should rather be rewarded when they actually promoted forestry and wood production, for 'by strokes and beating, tyranny and correction, intimidation and curses, wooden horse and dismissal, which are used as frequent rewards by imprudent landlords, it will certainly not happen'.[86]

Still, in spite of the countless anxious writings on forest management and fuel supplies, Danish woodland resources were positively not devastated by the middle of the eighteenth century. When a new *overjægermester*, Frederik von Gram, took over in 1730, he received descriptions of the state of the approximately 900 woods still belonging to the crown. And the general picture was far from those 'savannas' with scattered solitary standards known from parts of the literature.[87] On the contrary, the great majority of woods were dominated by young trees, many of them being mere copses.

To Thorkild Kjærgaard, the forest history of early modern Denmark was characterised by continuous decline until the 1760's when silvicultural measures started to affect the development of the woodland acreage in a positive direction.[88] This description, however, has no foundation in reality. On the contrary, all available evidence points to the fact that deforestation accelerated during the second half of the eighteenth century bringing about the minimum level during the first decades of the nineteenth.[89] After 1770, an average of approximately 1100 hectares of woodland disappeared each year in Zealand alone. And thirty years later, the relative woodland

82. Tidernes Mangel 1760.
83. Anonymous 1757 A, p. 140.
84. Pelagus 1757: 'her i egnen tror folk ikke, at det syvende bud forbyder at stjæle træ'.
85. P. C. Stenersen 1758, p. 318: 'De ved, at om de end gribes, så har de dog ej andet at bøde for sig med end ryggen; dertil er de vant fra ungdom af, som hvervede soldater'.
86. Tidernes Mangel 1760: 'ved hug og slag, tyrrani og straf, trusler og forbandelser, træhest og afsættelser, som er ufornuftige proprietariers fleste præmier, vil det visselig ikke ske'.
87. E.g. P. C. Nielsen 1980, p. 20.
88. T. Kjærgaard 1994A, pp. 18 f, 129 ff.
89. B. Fritzbøger 1992, pp. 86 ff.

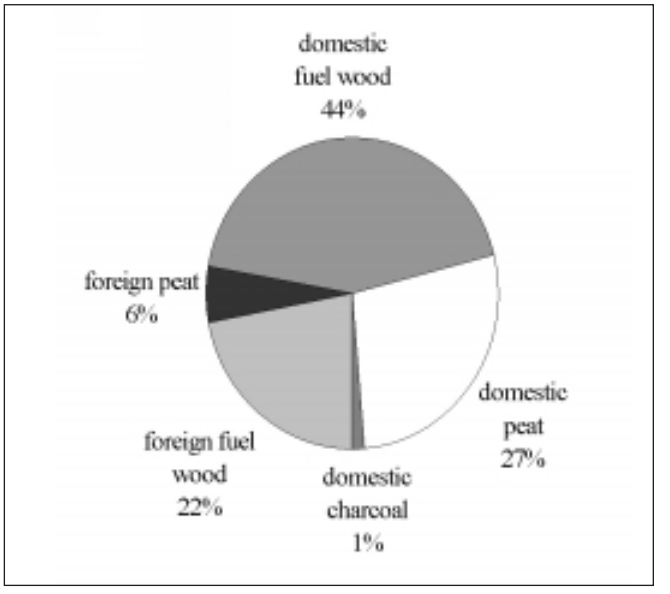

Fig. 33: *The relative consumption of firewood and substitute forms of energy in Danish towns 1761.*[92]

acreage of Denmark was computed to be roughly 4%.[90] As noted by the first surveyor of Danish ecological history, Christian Theodor Vaupell, in 1863 'although forest planting was initiated, the second half of the eighteenth century appears as the most unfortunate for the existence and state of the woods'.[91]

Backed up by the accelerated use of foreign wood substitutes, the consumption of woodland products does not appear to have exceeded the domestic supply. It is noteworthy that complaints about wood shortages – as was the case abroad – always focused on the future, not on the present.[93] After the allegations of an imminent fuel crisis had been withdrawn, Steen Steensen Blicher in 1839 ironically remarked that 'even now, neither their children nor grand-children are cold'.[94]

But prices were increasing together with the relative demand throughout the period. In 1808 Gregers Begtrup reckoned that Jutland produced more wood than its regional consumption.[95] And five years later the economist Christian Olufsen estimated that Denmark could, in fact, remain largely self-sufficient in fuel.[96] But this might be too optimistic. Firstly he excluded the energy content of imported raw

90. A. F. Bergsøe 1847, p. 206.
91. C. T. Vaupell 1863, p. 22: 'Den sidste Del af det 18de Aarhundrede var – uagtet man havde begyndt med Plantning – vistnok den uheldigste for Skovenes Tilværelse og Bevoxningens Tilstand'.
92. Rigsarkivet, Rentekammeret 333.11.
93 for German examples, see J. Radkau 1983, pp. 515 f; *idem* 1986, p. 56.
94. S. S. Blicher 1839, p. 144: 'Men! Endnu fryser hverken deres børn eller børnebørn'.
95. G. Begtrup 1808, p. XXXIX.
96. C. Olufsen 1811, pp. 128 ff.

materials such as iron from his calculations.[97] And secondly, he implied a quite unrealistic increase in the domestic production of bog peat.[98]

It is indisputable that population growth and consumption by a variety of manufacturing and industry triggered increasing prices which subsequently resulted in numerous instances of forest clearings.[99] And what is more, the process of land reforms itself appears to have been a major cause of late eighteenth century deforestation.[100] In 1810 the royal *overførster*, C. A. A. von Warnstedt, explained the poor condition of Danish forests by listing the transfer of landed property, excessive use of the forest for clearing, charcoal-burning, burning of heather, collection of branches, excessive felling of trees, forest pasture, game, the use of wooden bridges, felling in the summertime and, finally, abuse of the enclosure ordinance. 'Through misuse of the royal act by enclosures, forest management interests are harmed in several places'.[101]

97. T. Kjærgaard 1994A, pp. 122.
98. D. C. Christensen 1996, pp. 178 ff.
99. Den danske Atlas 4, pp. 26 f.
100. G. Begtrup 1803, p. 340.
101. Rigsarkivet, Rentekammeret 333.11: 'Durch Mißbrauch der Königl. Verordnung bei Ausschiftungen durfte endlich auch wohl an meheren Orten das Forst-Intresse unbillig gefährdet werden sein'.

Chapter 17
Reform legislation 1750-1805

Enclosure legislation 1757-76

Structural land reform legislation was started in 1757. In November the government established a commission to design allotment and enclosure of *overdrev*.[1] Its members were required to suggest 'how division could take place among owners one of which has the ground or other use of pasture, coppicing etc. whereas another has the wood, peat cutting etc in the same spot [… so that] everybody is not impeded in his right to use what he owns'.[2]

The commission's work resulted in three regional ordinances on enclosure 1758-60.[3] They incorporated an annulment of the prohibition against particular fencing of parts of *overdrev* included in *Danske Lov*, which augmented the minimum level for participation in common hunting from ownership of four to ten *tønder hartkorn* per village and it finally outlined the possibility of voluntary enclosure of *overdrev*. The two ordinances covering Funen and Jutland furthermore contained paragraphs on hedge planting.

None of the three subsequent enclosure ordinances of 1761, 1769 and 1776 had any explicit reference to woodland enclosure. The first further raised the limit for participation in common field hunting from ten to twenty *tønder hartkorn*.[4] Presumably, this was meant to encourage rounding off of land and subsequent enclosure. And in 1776 forests were only mentioned in connection with the matter of surveyor payment. The highest rate was to be given when the measured meadow and arable was 'located among wood and bushes'.[5] But no remarks concerned the same.

During the preparation of the 1769 ordinance, the *overjægermester* Carl Christian von Gram proposed to the commission that 'those still living near the woods […] could have their pasture outside the wood so that the wood could be entirely by

1. P. Hansen 1889, pp. 4 ff; H. Jensen 1936, pp. 36 ff.
2. Kongelige Rescripter 5:2, pp. 205 f: 'hvorledes delingen kunne ske imellem de lodsejere, blandt hvilke én har grunden eller anden brug af græsning, gærdselshugst etc., men en anden derimod på samme sted har skoven, tørveskær med videre […så ikke] enhver hindres fra ret at benytte sig af det han ejer'.
3. Forordning angaaende Land-Væsenets Forbedring … 1758, 1759, and 1760.
4. Forordning angaaende Land-Væsenet i Danmark … 1761.
5. Forordning om Fælledskabets nærmere Ophævelse … 1776: 'imellem skov og busk beliggende'.

itself'.[6] He simply considered forest pasture to be the main obstacle to woodland regeneration, and the following year his immediate subordinate the *overførster*, Anders Olsen, claimed that the alleged grazing rights held by crown tenants in northern Zealand had no legal foundation. It was 'inconceivable how the king's *herlighed* and rights to ground and pasture in woods and *overdrev* can be claimed and employed by unwarranted people; yes, even demanded as the property of the inhabitants of some village near the forest'.[7] He therefore proposed stricter control over forest pasture in relation to valid assessments of its sustainability, temporal restriction to the period from spring until 11 November, free access for the forest officials to fence parts of the wood for silvicultural purposes against payment of pecuniary compensation to the tenants.

But, as we have seen, nothing of the kind happened in the subsequent ordinance. On the contrary, this dealt with enclosure of *overdrev* without properly indicating a procedure for those instances where it consisted of woodland. So in August 1769 Carl Christian von Gram sent a new letter to the commission. He found that the ordinance had neither any clause on forests nor any exception concerning them. But as peasants in his opinion were likely 'still more to destroy the forests rather than to propagate them', he appealed for grazing in the royal forests in general to be banned.[8] This, he concedes, will undoubtedly provoke considerable hardships. But, as the peasant custom was based upon 'old conventional prejudice' rather than legal rights, it was urgent.[9] However, one more decade with forest pasture was to pass before the separation of the royal forests commenced.

The Enclosure Act and the Forest Ordinance of 1781

With less than one week's interval, two important decrees were issued in April 1781: on the 18th, a forest ordinance comprising 100 articles valid for royal forests only, and on the 23rd, the so-called 'Great Enclosure Act'. The first does not approach the matter of forest enclosure in detail. As an enclosure of the royal forests of northern Zealand had already been initiated, it simply states (in article 83) that 'just as we have already begun the measurement of our forests and the exclusion of all those

6. Rigsarkivet, Rentekammeret 3323.87: Letter from C. C. von Gram to the *Landvæsenskommission* 14.11.1767: 'daß die noch am Walde wohnende […] ihre Weyde außerhalb des Waldes erhielten, so daß der Wald könnte vor sich gandz allein seyn'.
7. Rigsarkivet, Rentekammeret 3323.87 (21.9.1768): 'kand icke vel begriibes, hvorleedes Kongens Herlighed og Rettighed til Grunden og Græsningen i Skove og Overdrev af uberettigede kand paastaaes og bruges, ja som Eyendom kræves af eén eller anden byes Beboere omkring Skoven'.
8. Rentekammeret 3323.87 (15.8.1769): 'mere og mere vilde ödelegge dem, i stæden for at bringe dem til nogen fremgang'.
9. Rentekammeret 3323.87 (15.8.1769): 'gamle vedtagne fordomme'.

who previously held pasture rights in them, in this way we wish it continued without delay'.[10]

The ordinance, however, embraces thirty-three articles regarding the protection of royal forest property against theft and other abuse. In general, it forms a continuation of the previous ordinances. But some innovation can be traced.

When an offender was unable to pay the prescribed fine, he should do compulsory labour 'to the benefit of forestry'.[11] In cases where the crown owned the trees and others the ground, the latter were compelled to ensure that no forest theft took place or to suffer the penalty themselves (article 31). The only exception to this directive was Jægersborg Dyrehave, a popular park north of the capital. More conspicuously, the ordinance banned all access to enclosed royal woods without particular permission (article 35). This was, in fact, the new constitution upon which all other regulation of the royal forests was based.

The Enclosure Act describes for the first time in detail how surveyors should proceed when enclosing an *overdrev* with wood.[12] During the preparation of the act, it was concluded that no part of the previous legislation concerned this matter.[13] As preliminary principles, an anonymous *aide-mémoire* of 1778 suggested largely those standards which were later included in the act. And where *overdrev* had already been enclosed, it proposed that a redistribution of the land should be carried out.

The legislative commission was not restricted to theoretical considerations. For woodland enclosure (separation) had, in fact, been initiated in the crown woods of northern Zealand before the act was issued. So in the summer 1780 *overførster* Christian Claussen produced yet another *aide-mémoire* concerning the actual procedure applied there.[14] He notes that voluntary agreements with the peasantry had in many cases solved the question of compensation for lost pasture rights.

According to paragraph 16 of the Enclosure Act, if one person owned the wood while the land was the common possession of more, then the first should have his parcel assigned in that part of the *overdrev* where the wood was densest. Other participants who only held pasture rights should, on the other hand, have their parcels in the tree less grassland. In cases where this proved impossible, if, for example, the whole area was covered with wood, the participants were requested to exchange land so that the forest owner received the entire *overdrev* whereas the holders of pasture

10. Chronologisk Samling, p. 261: 'Ligesom Vi allerede have ladet begynde med at opmaale Vores Skove og udskifte dem af alt Fællesskab med dem, som hidtil have havt nogen Ret til Græsning der, saa ville Vi, at dette uafbrudt skal fortsættes'.
11. Article 27: 'til Forsvæsenets Nytte'.
12. Chronologisk Register 7, pp. 94 f.
13. Rigsarkivet, Rentekammeret 333.193 (26.11.1778).
14. Rigsarkivet, Rentekammeret 333.193 (10.7.1780)

rights were reimbursed with other lands. By the valuation methods antedating this kind of exchange, the volume of wood should be compared with the grazing value of the ground. If the *overdrev* was partitioned, then the value of the trees located outside the future wood should be added to the parcel of the wood owner as a grazing lot.

It appears that a preliminary outline for the Enclosure Act applied the woodland *hartkorn* as basis for the re-distribution of overwood and land. But, as an anonymous commentator argued, this could have very inequitable consequences if the forest was over-cut, for example. By selling the wood, the owner had, in fact, realised its value and he should not expect later to receive a parcel of the *overdrev* conforming to a *hartkorn* that was no longer relevant. 'The thing, I believe, should be taken as it is now but not as it was a hundred years ago'.[15]

The Enclosure Act included no clauses regarding the abolition of common rights between holders of overwood and underwood. But during its preparation, the experienced surveyor Carsten Ehlers suggested that 'something should be decided […] on the advice of owners as well as surveyors. The assessment is not as difficult as some believe; for when overwood and underwood are compared regarding fuel and coppice, and the ground on which the wood stands is compared according to the benefit of itself while the wood remains there, whatever a person gets more or less, when he receives commensurate wood, he shall either give it or should have it in places where no wood grows. And considering that in woodland tracts numerous men are able to ascertain precisely how much fuel wood a tree contains or how much wicker can be cut every seventh year in a certain place, it would not be difficult to make such comparisons'.[16]

In 1787 an ordinance was issued to regulate the relation between lord and tenant.[17] One aspect concerned woodland usage. A general interdiction against reducing the size of tenant farms was confined in a number of particular cases. And one of these was when the lord wanted to reduce or abolish a farm in order to culti-

15. Rigsarkivet, Rentekammeret 2485.1, no. 2: 'Tingen, tror ieg, maae tages som den nu er og befindes, men ikke som den haver været for 100. Aar siden'.
16. Rigsarkivet, Rentekammeret 2485.1, no. 5: 'at der maatte blive bestemt noget i denne Post saavel til Lodsejernes som Betienternes efterretning. Magelægningen heraf er ikke saa vanskelig, som nogle har vildet giöre den; thi naar först Storskoven og Underskoven blev magelagt lige med hinanden i henseende til Brænde og Giersel og Grunden, Skoven staar paa blev magelagt efter Nytten af Grunden selv, medens Skoven staaer derpaa, og hvad en herved fik meere Grund eller mindre, naar hand fik lige Skov, det mistede eller blev ham godtgjort paa de Steder, hvor ingen Skov fantes, og som der udi Skov Egnen gives mange Mænd, som meget nöye baade kand bestemme, hvormeget brænde et Træ indeholder, og hvormeget Giærsel der hvert 7de Aar kand hukkes paa en Plads, saa var det ikke vanskelig uden Fornærmelse at giöre slige Magelæg'.
17. Chronologisk Register 9, pp. 176-190.

vate new forest. Yet it emphasised that such plantations were never to be included in the manorial *enemærke*.

The forest conservation act of 1805

Fairly little is known about the genesis of the piece of legislation forming a virtual 'forest constitution' of the nineteenth century: 'The Ordinance on the enclosure and conservation of Danish forests' or the 'Forest Conservation Act' (*Fredskovsforordningen*). Adolf Oppermann has examined the matter meticulously, but his results are rather inconclusive.[18]

He concludes that the first part of the act dealing with forest enclosure, but in reality just enhancing the methods of the 1781 Act, was the result of lengthy and exhaustive preparation. The formation of the second part addressing the matter of forest conservation, however, was not initiated until a few months before the issue in September. It appears to have been produced as an *ad hoc* measure provoked by raising fuel prices following the preceding very cold winter as well as by still more examples of forest grubbing.

In some respects, the issue of the Forest Conservation Act was a reply to immediate predicaments. But the dual need for an augmentation of the enclosure articles of existing legislation and for some kind of efficient protection against deforestation appears to have been under consideration for some time. Carl Christian von Gram's remarks against wood pasture have been cited above (pp. 259f), and in a topographical description of Zealand, Gregers Begtrup in 1803 considered how extensive clearing of woodland could induce the government 'by means of legislation [to] restrain the rights of landlords to cut in their woods, so that a forest owner could not employ his property rights in such a way that he harmed common interests'.[19]

The question of who owned the forest floor was much debated. Yet during the process the *Rentekammer* concluded that the owner of the overwood possessed the ground as far as the branches and roots reached – excluding possible holders of pasture rights.[20]

The fundamental clauses of the act are likely to have been imitated from the forest legislation of other European countries. No convincing model has, however, been found. Begtrup referred to the restrictive state supervision in effect in Prussian forests since 1794 and suggested that a similar Forest Department should be estab-

18. A. Oppermann 1929, pp. 114 ff.
19. G. Begtrup 1803, pp. 319 f: 'indskrænke ved love godsejernes ret til at hugge i deres skove, så at en ejer af en skov ikke kunne benytte sin ejendomsret således, at han derved skadede det almindelige'.
20. A. Linvald 1923, p. 258.

lished in Denmark.[21] But even though the causes of restrictive legislation are largely similar, the actual resemblance between the two laws remains insignificant.[22]

As far as the conservation clauses were concerned, the fathers of the Forest Conservation Act (as concluded by Axel Linvald) were essentially starting from scratch.[23] The enclosure prescriptions, on the other hand, clearly relied heavily upon experiences of the preceding decades. The basic principles were identical to those stipulated in the Enclosure Act of 1781. But some details might well have been influenced by particular incidents and experiences.[24]

The act consisted of two sections: one concerned woodland enclosure (§§1-13), the other (§§14-22) forest conservation. Since it presumably had a substantial impact on both the introduction of modern forestry and nineteenth and early twentieth century perceptions of property rights in regard to woods, its contents will be presented in some detail.[25]

Article 1 decrees that within five years from 1 January 1806 all wood commons should be abolished 'when it takes place 1) among owners of overwood and others who are entitled to forest pasture or 2) mutually among owners of overwood'.[26] The first kind related, for example, to the commonage between a landlord and his tenants, whereas the latter was a relation between lords (or freeholders). The time limit could be prolonged by exemption from the *Rentekammer*. So, whereas the woodland enclosure prescriptions of the 1781 Act were based upon freedom of choice, they were now compulsory. Still, the actual procedure in those cases where only a fraction of the participants in an *overdrev* owned the wood were adopted from the 1781 Act (§2).

Article 3 contains comprehensive directions for those cases in which the procedure outlined in article 2 was unrealisable; i.e. if the owner of the wood could not have all the wood on his own land, if the holders of pasture rights were unable to get all their compensation in those parts of the *overdrev* where there was no wood, or if no agreement could be reached concerning compensation for the lost pasture. In all instances it would be necessary to clear a part of the wood in order to create the required pasture.

In broad outlines, the mode of valuation resembled that of 1781. Firstly, the surveyor should compute the woodland acreage that consisted of both coherent stands

21. G. Begtrup 1803, pp. 319 f.
22. C. M. Møller 1929, p. 264.
23. A. Linvald 1923, p. 258.
24. E.g. H. Munk 1969, p. 208.
25. A. Oppermann 1929, pp. 92 ff.
26. 'naar det finder Sted imellem Overskovsejere og andre til Græsning i Skovene berettigede eller imellem Overskovsejerne indbyrdes'.

(as defined by branches and roots) and solitary standards (with a girth exceeding 24 centimetres). The size of the former was to be expressed by their volume of wood whereas the latter should be divided into three classes according to their content of fuel wood.

In each compartment of the former *overdrev*, the surveyors were then to estimate the average relation between wood volume and acreage. Then the value of the grazing should be assessed as it was for as long as the trees remained there. This value should, however, be reduced with one third in favour of the wood owner since the grazing value was expected to increase correspondingly as the trees were removed. Then the owner of the wood should chose if, apart from removing the trees, he would also drain the ground of the grazing lots. This, obviously, was important for the final summary valuation.

When the *overdrev* had been appraised in this way, the surveyors had to produce a scheme for its enclosure. Its primary objective was to assign to the former holders of grazing rights those areas on which little or no woodland was located, and to do it in such a way that the geometrical figure of the remaining woodlot was as regular as possible. In order to avoid wind exposure, compensation to the holders of grazing rights should never be awarded in the western part of the wood.

As it was the case with ordinary enclosures, the participants in the former common now had two options. They could either assent to the partition plan or they could present it before the regional Rural Commission (*Landvæsenskommission*) of the royal *Rentekammer* for a conclusive decision. When a plan was affirmed, a time limit for the removal of trees from the grasslands had to be fixed. The ordinance had a maximum of five years for clearing and ten years for other improvements of the ground.

Article 6 concerns those cases in which the possession of overwood, underwood and pasture was divided between several persons, or where there was only underwood and pasture (but no overwood). Firstly, the overwood should be divided as described in article 3. Then the underwood should be appraised according to its potential production of wickers and the land according to its grazing value. Every participant should have his parcel in accordance with the value of his property.

As far as possible, underwood and pasture should be distributed in such a way that each farm's relative share of the two resources was not changed. If a participant received underwood (which he did not want) instead of pasture, then the Rural Commission or the *Rentekammer* should endeavour to reconcile the parties. If all agreed, the previous holders of underwood rights could be admitted to use it for up till six years after the enclosure, if they only coppiced during the winter time.

Article 7 deals with compensation to the holders of grazing rights in those parts of the country in which the ground was expected to become covered with heather as the wood was cleared. If that happened, the grazing value would diminish. So rather than follow the ordinary precepts, the holders of grazing rights were compelled

without any compensation to bestow one fifth of the wood to the owner for silviculture. The parcel to be used for this purpose, however, was not fixed. When the trees had reached a certain minimum size, another parcel was to be conserved, and this should continue in a quintuple rotation.

Article 8 takes up the issue of allotment among owners of overwood, which was, in fact, the kind of woodland enclosure known since the sixteenth century. But in reality it was more concerned with the re-distribution of woods that had already been allotted.

If the participants were unable to reach an agreement over the appraisal prior to the partition, then unbiased surveyors had to review it. The wood was to be assessed as timber and as fuel wood from which its market price was deduced. In this price cultivation, transportation, wages for processing etc. should be taken into consideration. Once the assessment was over, the division should take place in such a way that each participant received a lot corresponding with his share of the total value (*tønder hartkorn*). Finally, the article stresses that the new lots should preferably be located where each of the owners previously had had their share. So, an antecedent allotment is presupposed.

In cases where clearing of good forest would follow from the enclosure, the Rural Commission should attempt to bargain with the parties so that this could be avoided (article 9). The forest owner could, for example, buy off the receivers of grazing.

Article 10 addresses the extinction of the vertical woodland commonage between lord and peasant. As in articles 1-3, wood and pasture should be divided within five years through some kind of remuneration to the peasants. If it would not injure their interests, the commission could choose to apply article 7 instead. If grazing capacity would not benefit from this solution, the peasants were entitled to an additional, cash compensation when the first fifth of the forest was conserved.

By change of tenants, the forest owner was permitted to exclude the new tenant from forest pasture and hence to conserve the wood (article 11). In the same situation or by mutual agreement he was also allowed to close a tenant farm in order to achieve supplementary land for grazing compensation or forest plantations. If he did so, four conditions existed: the *Rentekammer* should be notified, the plantation was considered as *fredskov* (see below), for every farm closed down two cottages were to be erected, and the villeinage pertaining to the deserted farm could not be transferred to his other tenants.

Finally, the county governor was appointed to produce annual reports regarding the observance of the act regarding woodland enclosure (article 12). And article 13 noted that instances not embraced by the act should be treated according to the Enclosure Ordinance of 1781. This was the case with allotment of pure underwood.[27] As regards any common right shared by the holders of underwood and pas-

27. V. Ingerslev 1872, p. 320.

ture, this was not prohibited, but it should be dissolved if one of the participants so demanded.[28] The Forest Conservation Act gave no lower limit for the woods resulting from enclosure.

The second section dealt with forest conservation. Its clauses represented a remarkable restriction of *ius utendi et abutendi* (the rights to use and misuse) which is traditionally considered as a key element in property rights. Article 14 states that all kinds of conversion of overwood to arable, meadow or grassland were prohibited except for four distinctive cases. Firstly, the clearing of areas designed as grazing compensation was naturally legitimate. Secondly, in *enemærkeskov* the owner was allowed to select an area equalling two-thirds of the grazing value of the forest for future pasture. And finally, the Royal *Rentekammer* was able to exempt from the general forest conservation injunction.

Article 15 commands the forest owner to maintain and conserve the forest. It further explains that 'a wood is only then considered as properly conserved when no livestock, except pigs, are grazing in it, when no hay-making takes place under the trees and it is also fenced in accordance with this act'.[29] Fences should be erected at the latest by the time common rights were abolished. As the only possible exclusions from §15-16, the subsequent article mentions grazing remunerations, woods explicitly used as game parks (*dyrehaver*) and tiny scattered plots of woodland, which, however, were still not to be cleared. Further, haymaking and grazing tethered cattle in meadows within conserved forests was allowed. It is not stated expressly, but this last concession must relate to open areas.

According to article 17, the owner was free to decide by which means he wished to propagate the forest. But if he chose to apply modern high forest management techniques involving major clear cuts, then he was compelled to seek approval by the *Rentekammer* 'since this treatment has only been used little in this country and the forest without the required caution might easily be ruined instead of propagated'.[30]

The articles 18-19 include provisions about annual reports on the adaptation of the act and establish the punishment in case of transgression. Article 20 disallows any retail from a wood within the first ten years after a change of proprietor without the prior sanction of the Royal *Rentekammer*, no matter whether this was a complete estate or not.[31] Finally, the two last articles state that infringements should be

28. V. Ingerslev 1872, p. 329.
29. A. Oppermann 1929, pp. 97 f: 'Og skal en Skov ikkun anses at være tilbørligen fredet, naar ingen Kreature, Svin undtagne, deri græsse, ingen Høslæt deri under Træerne foretages, og den tillige er anordningsmæssigen indhegnet …'.
30. A. Oppermann 1929, p. 98: 'da denne Behandlings-Maade ikkun lidet er bleven brugt her i Riget, og Skoven uden den fornødne Forsigtighed ved samme let kunne ødelægges, i stedet for at opelskes'.
31. A. Oppermann 1919.

referred to by the ordinary court of law and that those items in the 1733 ordinance that were not changed by this or any other later legislation were still valid.

The act holds no clauses concerning common ownership of underwood. But according to later authorities on the subject, the abolition of such relations should take place in accordance with the Enclosure Act of 1781.[32]

For posterity the Forest Conservation Act formed nothing less than the foundation of modern forestry in Denmark.[33] And only a few months after its issue, the owner of Hals in Northern Jutland produced a *pro memoria* in which he highly praised the government forest policy.[34] Not all contemporaries were, however, equally impressed by this unabashed state intervention. One of the few authors who criticised the new law on principle was the economics professor, Christian Olufsen. A few months after the issue, he dealt with it in an article in a magazine he himself edited. His primary concern was the degree of state control expressed by the act. He concludes his essay by rhetorically asking 'if the best interest of the state at the present time demands that the government places fuel wood production under its supervision and consequently imposes upon forest owners such restrictions as are determined by the new forest ordinance?'[35] His own answer, with due respect for the existing censorship, was evasive – his meaning clearly negative.

As times went by, still more critics appeared. In the middle of the nineteenth century, the jurisprudent, Anders Sandøe Ørsted, was clearly not comfortable with the act's limitation of the forest owner's property rights.[36] And in 1830, Carlo Dalgas concluded that 'more compulsion is harmful, reduces property values and aggravates too much. Exaggerated affection for the forest is, in fact, nothing but pedantry'.[37]

The majority of observers were, however, almost entirely positive. And the preservation of a sustainable supply of wood was their primary argument. As it was phrased by L. C. Brinck-Seidelin, 'moorland can be rapidly re-established, woodland not'.[38] In 1837 A. F. Bergsøe concluded that 'concerning deforestation, numerous forests have – notwithstanding the prescribed penalty – totally vanished. But this law has notably restrained the progress of forest destruction and made it the excep-

32. V. Ingerslev 1872, p. 320.
33. E.g. L. Dombernowsky 1988, p. 380; C. Bjørn 1990, pp. 16 f.
34. Rigsarkivet, Rentekammeret 3322.261, no. 43. (31.3.1806).
35. C. Olufsen 1805, p. 148: 'Om Statens Bedste i nærværende Tidspunkt gjør det nødvendigt af Regieringen tager Brændeproductionen under sit Opsyn og i Anledning deraf paalægger Skovejere de Indskrænkninger, som den nylig udkomne Skovforordning bestemmer?'
36. A. Oppermann 1929, p. 134.
37. C. Dalgas 1830, p. 179: 'Mere Tvang er skadelig, nedsætter ejendommens Værd og generer for meget. Overdreven Kærlighed for Skovene er i Grunden ikke andet end Pedanteri.'
38. L. C. Brinck-Seidelin 1828, p. 265: 'Lynghede kan hurtigt genskabes, ikke Skov'.

tional rather than the rule, as it almost used to be'.[39] It was, in other words, a relative success.

In the 1860's, the continuance of its restrictive provisions became a matter of intense political disagreement and it was described as 'one of the worst cultural laws ever written'.[40] But attempts to have it repealed proved to be in vain, and virtually no major deviation from the positive judgement on its historical import has been traced.

39. A. F. Bergsøe 1837: 'Hvad Skovødelæggelsen angaaer, da er vel mangen en Skov, uagtet den fastsatte Straf, senere aldeles forsvunden; men denne Anordning har dog betydeligt standset Ødelæggelsens Fremskridt og bevirket, at sligt er blevet til en Undtagelse, istedetfor at det forhen var nær ved at være Reglen'.
40. F. Oldenburg 1863, cf. A. Oppermann 1887-89, p. 99: 'en af de sletteste Kulturlove, der nogensinde ere skrevne'.

Chapter 18
Woodland reforms before 1805

The sale of crown woods 1764-74

When it was publicly known that the crown intended to sell major portions of its landed property, *overjægermester* von Gram attempted to prevent the forests being sold with them.[1] In a letter to the *Rentekammer*, his subordinate *overførster* in southern Zealand, Jørgen Villumsen emphasised that the forest 'could be likened to a gold purse that for the owner is a dead asset but when needed is highly beneficial'.[2] Nevertheless, as we know their efforts were in vain. Over a period of ten years almost all crown woods were sold. What remained were some minor woods in Odsherred (Zealand) and the substantial wastelands of northern Zealand.

Some parts of the crown lands were sold as estates with manor and tenancies, whereas others – especially in Jutland – were sold to peasants as freehold. But if the buyer did not own a complete estate (see p. 107), then according to article 33 of the 1710 ordinance he was not allowed to cut commercially in his newly appropriated woods. In 1768 this limitation was however somewhat eased.[3] If no major liability to the crown remained, the owner was now permitted to sell wood as long as he planted three trees for each one he felled, fenced the re-growth for as long as necessary and performed an annual inspection. In 1791 supervision of freehold woodlots which had been constituted when the regimental districts were sold was restricted to those woods where substantial debts to the crown remained. And three years later, only woods in actual peril of being cleared were to be supervised by state officials.[4] Finally, the Forest Conservation Act of 1805 reiterated the abolition of trade restrictions in regard to the extent of the owner's landed property (article 20).

The entire process of property transfer did, however, have a considerable impact on many woods. In general, the new landlords were regarded as far more damaging

1. K. Nørgaard 1935.
2. Cited after K. Nørgaard 1935, p. 7: 'saa maa den dog lignes ved en Guldbørs, der vel er for Eieren en død Capital, men naar den behøves udi mange paakommende Tilfælde, saa er den jo dog en stor Hielp og Nytte'.
3. Rigsarkivet, Rentekammeret 331.1-5 (23.6.1768).
4. Kongelige Rescripter VI:7, p. 383; Rigsarkivet, Rentekammeret 331.1-5 (19.2.1794).

Table 4: *The offer of the crown lands 1764-74*[5].

Cavalry estate	year sold	total size (tønder hartkorn)	size of woodland (tønder hartkorn)
Funen	1764-65	5748	70.8 (*1.3 %*)
Dronningborg	1764-65	2336	0.6 (*0.0 %*)
Koldinghus	1764-65	7846	28.4 (*0.4 %*)
Falster	1766	7251	45.0 (*0.6 %*)
Skanderborg	1767	5428	101.8 (*1.9 %*)
Antvorskov	1774	5800	69.6 (*1.2 %*)
Vordingborg	1774	4214	76.6 (*1.8 %*)

than the old.[6] In 1775 a number of freeholders from Funen and Jutland were convicted for abuse of their new woodlots.[7] In 1798 the buyers of Mariager Abbey met a similar fate.[8] In Silkeborg H. P. Ingerslev in 1804 planned to exploit the capital of the woods rather crudely but was halted by the issue of the 1805 Act.[9] And in similar cases where estates were sold at too high a price or to insolvent buyers, the woods were frequently felled.[10] By 1806 the woods belonging to Løgismose of Funen were, for example, divided into parcels and sold.[11]

From tenancy to freehold

Naturally, the new standing of the peasantry brought with it certain considerations about their future woodland rights. When a farm with its woodlots or field woods changed status from tenancy to *arvefæste* or actual freehold, forest ownership could be modified in various ways.

As tenants were transformed to *arvefæstere* or freeholders, their obligations towards their landlord changed. For the great majority, the traditional obligations to provide labour services were dissolved. As we have seen, felling and cartage made up a substantial part of these services in many manorial economies. But as the extent of villeinage was regulated for the remaining tenants, so was its content. In 1788 C. D.

5. Data according to printed announcements in Rigsarkivet, Rentekammeret 2244.186, 2247.19-20. and 2247.26. Since no such primary data were available for Falster, figures were taken from H. Hjelholt 1935, p. 579.
6. P. C. Stenersen 1758, pp. 314 ff; C. Weismann 1900, p. 14.
7. A. Oppermann 1929, p. 91.
8. A. Oppermann 1929, pp. 121 ff.
9. B. Harboe 1994.
10. Rigsarkivet, Rentekammeret 333.11 (W. Warnstedt 1810).
11. Rigsarkivet, Rentekammeret 3322.396 (1806).

Reventlow summed it up as follows: 'it is beyond doubt that they [i.e. the tenants] are liable to fell the trees, to make logs of them and – if so requested – to cut them to corn wood. But the minor cutting and shortening for use in the stove appears to belong to that kind of house-work for which the peasants should not be employed'.[12]

When a wood was enclosed, the previous landlord was regarded as the owner of the overwood and he could consequently claim either to hold the trees or to receive a compensation for those located in peasant holdings. According to the prominent jurisprudent, Christian Colbiørnsen, the forest owner was even entitled to propagate new trees in perpetuity, when the old ones were cut.[13] This, however, was a rather radical view emphasising the character of overwood ownership as an easement in the freehold proprietorship to the ground.

As the crown tenants in northern Zealand were turned into *arvefæstere*, they lost their customary rights to receive allowance of wood. Still, to avoid over-cutting, the allowances of building and wagon timber together with wickers continued for a twenty-year period.[14] Furthermore, they kept all standing trees in their fields below a diameter of 7.5 centimetres.[15] And in the Sorø Academy, where *arvefæste* was introduced in 1795 and most of the farms were enclosed during the subsequent years, an abundance of trees were felled in the former tenant fields.[16]

This, naturally, applied when property rights to ground and wood were separated. But in Møn, the peasant community bought their own holdings and it consequently owned the wood in common. So the system of allowances continued.[17] Now, however, it was the peasant community as collective owner which made allowances to the individual receivers.

In general, the management of the new peasant woods was legally regulated by the 1733 ordinance. So large-scale deforestation remained illegal. But, even though some villages such as the inhabitants of Bogø included this general injunction in their updated by-laws[18], numerous freeholders appear to have maltreated their woods.

In some cases, woodland capital was even liquidated in order to establish the cash needed for the first instalment on its purchase. From Koldinghus Cavalry Estate the minister, J. N. Wilse, tells us how, at the time when the crown lands were sold, entire

12. Konjunkturer og afgifter, p. 128: 'Det er uden Tvivl, at det paaligger dennem at fælde Træerne, at save dem over i Kævlinger, og om det forlanges, at skiære og kløve dem til Favne-Brænde. Men Smaakløvningen og Savningen til Kakkelovns Brug synes at høre til det Huus-Arbeide, hvortil Bønderne ikke maatte bruges'.
13. A. Oppermann 1929, pp. 103 f.
14. P.V. Christensen 1976, p. 34.
15. A Oppermann 1929, p. 78.
16. A. Oppermann 1929, p. 80; Rigsarkivet, Rentekammeret 3322.342-343.
17. F. G. Christensen 1948; H. Schummel 1989, p. 79.
18. Danske Vider og Vedtægter 4, pp. 79 f; K. Nørgaard 1935.

convoys of peasant carts were driving fuel wood from Trelde Skov to the town of Fredericia.[19] And in 1805, after a journey in Jutland, Laurits Engelstoft relates how 'most peasants have "bought themselves" and the instalments they pay by selling fuel wood, whereby almost all wood has been ruined'.[20]

Woodland enclosure

Our most detailed descriptions of common woodland property originate from the process of its abrogation. Late eighteenth and early nineteenth century evidence, therefore, enables a more elaborate inquiry into the different forms of common rights than is feasible in the preceding periods.

Overwood, underwood and wood pasture (land) continued to be the fundamental 'resource layers' from which all possible combinations of property rights were derived. But in contrast to earlier times, the content and significance of each was now discussed openly. Or rather, explicit written statements on the matter were made for the benefit of later historians.

In his thorough survey of the Forest Conservation Act of 1805, Adolf Oppermann addresses some of the key concepts of forest ownership and management *c.* 1800.[21] It is characteristic that concepts such as wood (*skov*), overwood (*overskov*) and underwood (*underskov*) were still highly ambiguous. As a result, therefore, it remained undecided whether the overwood included those young trees that were liable to grow tall or not. In this respect, the conceptualisation of the reform period was no more intelligible than that of the foregoing centuries.

As it has been demonstrated in the preceding chapters, a lengthy and irresolute process of property separation and enclosure had been going on since the Middle Ages. In general, horizontal commonage relating to the overwood appears to have been almost totally abandoned by 1750. But, apart from the *enemærke* woods pertaining to manors, both the vertical commonage between lord and tenant and the horizontal commonage of wood pasture still prevailed. So, when the final attack against common property was launched in the eighteenth century, it focussed upon these two aspects.

The woodland enclosure of the eighteenth century generally took place in conjunction with the redistribution of the arable. 'For, as long as scattered groves filled peasant fields and meadows, the trees were everywhere a hindrance and – what is more – easy to carry off'.[22] But this was not always the case. In Vadsted (eastern Jut-

19. J. N. Wilse 1798, pp. 88 f.
20. Laurits Engelstofts Rejseiagttagelser, p. 25: 'have kiøbt sig selv og betale Kiøbesummen af med det Brænde, de sælge, hvorved nu næsten al Skov er ødelagt'.
21. A. Oppermann 1929, pp. 102 ff.
22. N. Rasmussen Søkilde 1875, p. 94: 'thi, saa længe Strøskove stode ved Strøskove trindt omkring paa Bøndernes Marker og Enge, vare jo Træerne allevegne til Hinder og desuden lette at bortføre'.

land), the village wood was designed to be possessed in common after the enclosure of the arable.[23] So, in reality, enclosure often appears to have represented a transformation of the spatial property structure rather than a completely new arrangement. We are, for instance, informed that the vicarage in Balslev (Odense County) had its underwood lot 'substituted and allotted to the vicarage at the far end of the village field'.[24] The 'substitution' suggests that the vicar did, in fact, have his own woodlots in advance.

When it comes to the distribution of closed stands among the village farms, customary roping-methods were still applicable. But the process of abolishing vertical wood commons was far more complicated. Apart from the prescriptive formulations of Enclosure Acts, we have only few descriptions of the actual procedure employed by early eighteenth century cases of forest enclosure.

At some (undefined) moment during the reform legislation process, the mathematics professor, Thomas Bugge, himself a prominent surveyor and member of The Royal Danish Academy of Sciences and Letters, constructed a number of hypothetics examples of village enclosure.[25] And some of these include the distribution of forest rights.

In his third example, the lands of seven freehold farms (of respectively 4, 6, 7, 8, 2, 3 and 5 *tønder hartkorn*) are enclosed (see fig. 34). Firstly, a part of the northern woodland is designated as potential compensation for those who are not to receive as much wood in their new parcels as they used to have. Then the remaining village lands are partitioned into two major parcels, which are proportionate with 18 and 17 *tønder hartkorn* respectively. Corresponding to these parcels, the seven farms are clustered in two groups representing the two summary assessments (class 1 to the value of 18 *tønder hartkorn*: farms nos. 1, 3, 5 and 7; class 2 to the value of 17 *tønder hartkorn*: farms nos. 2, 4 and 6). The woodland of the village covers 86 *tønder*, arable and meadow 280 *tønder*, so for each *tønde hartkorn* field and meadow there are (the woodland included) 8 *tønder land*. Preliminary dividing lines are placed almost in middle of the fields, after which the size of the parcel each farm should have is calculated, bearing both acreage and quality in mind. Then the preliminary lines are repositioned accordingly.

Regarding the forest, it is noted that 'it should be carefully ensured that each and every man obtains so much wood (as well as arable and meadow according to his *hartkorn*), as he previously held in the common. So, nos. 1, 4, 5 and 6 have received their woodland rights in their own parcels, whereas nos. 2, 3 and 7 have received less

23. J. Holmgaard 1988, pp. 294 f.
24. Rigsarkivet, Rentekammeret 2485.10: 'ombyttet og tildelt præstegården i den yderste ende af byens marker'.
25. Rigsarkivet, Rentekammeret 432.103; E. Andersen 1968.

wood than they used to have; the deficit is transferred to them by drawing lots and including in the calculation wood A, which has been designated in advance.

According to the circumstances, the deficit for no. 2 could be taken from the neighbouring parcel no. 6 if it (i.e. no. 6) either had too much or could have some in return from no. 4. If one parcel had too much wood, then its borderline should be changed and moved in such a way that the surplus was eliminated. Along the dividing line between the classes, the road to the lots in the wood A is established'.[26]

Partial enclosure – i.e. enclosure in two phases as it was sometimes executed when the arable was partitioned – might also have applied to forests. In a singular example, we are told that Rønninge Hestehave was enclosed twice.[27] After the first enclosure in 1785 it was possessed in common by five tenants, whereas their landlord at Rønninge Søgård owned the land. But in connection with the second in 1798, the wood parcels were sold to the peasants.

Just because a wood was divided into a number of farm-based parcels, they were not necessarily fenced. So the abolition of vertical commons was not inevitably followed by that of horizontal grazing commons as well. Furthermore, sometimes access to fencing materials even determined whether the enclosed lots were fenced or not. From Idestrup in Falster we are told in 1785 that 'the village has a little beech wood that is fenced off from the neighbouring villages and in which everyone's lot is marked by a stick, but is it not enclosed further than the minister's part since the fencing only sufficed for the field fences and the wood'.[28]

Experimental forest enclosures in Jutland

In the late 1770's the governor in Koldinghus County, Hans de Hofman, suggested to the *Rentekammer* that attempts should be made to enclose some of the woods pertaining to that large group of new freeholders that were a result of the crown land

26. Rigsarkivet, Rentekammeret 432.103: 'Derved maatte meget nöye paasees, at eenhver erholder saa megen Skov (foruden Ager og Eng efter hans Hartkorn), som han tilforn i Fælledskabet havde. Saaledes har No:r 1, 4, 5, 6 erholdet deres Rettighed af Skov udi deres egne Lodder, men No:r 2, 3, 7 have faaet mindre Skov, end de tilforn havde; det Manglende udlægges dem derfor ved Lodkastning og beregning udi den Forlods udtagene Skov A. Heller og kunde efter Omstændighederne det Manglende for No:r 2 tages hos Naboe Lodden Nom. 6, om samme enten havde formeget eller kunde hos No:r 4 erholde Erstatning af Skov. Skulde udi een Lod være formegen Skov, saa maatte Grændse-Liinien for samme Lod saaledes forandres og böyes, at det overskydende derfra igien udlægges. Langs med Deelings Liinien imellem Classerne anlægges Veyen til de i Skoven A udlagte Stökker'.

27. Rigsarkivet, Rentekammeret 3322.396 (1806).

28. Rigsarkivet, Rentekammeret 2485.9: 'byen har en liden bøgeskov fra pågrænsende indhegnet, hvori hvers lod er afpælet men ikke uskiftet mere end præstens part, da hegningen ej har kunnet række længere end knapt til markgærderne og skovens hegning'.

Fig. 34: *Thomas Bugge's third example: a hypothetical village (located to at the very bottom of the map) consisting of seven freeholders is enclosed.*

alienation a decade earlier. Clearly what he had in mind was not an entirely new forest allotment. As he later explained: 'instead of each man having 12 to 14 lots, he now has his wood on two fenced sites where he has propagated trees and from which the cattle are excluded during the time they can do harm'.[29]

As de Hofman's plan was known, several anonymous civil servants in the royal *Rentekammer* commented on it.[30] Firstly, they opposed the idea that the existing woodlots should be assembled in two lots per farm instead of one. They further pro-

29. Rigsarkivet, Rentekammeret 313.26: 'i steden for hver Mand havde 12 à 14 Skifter han hand nu paa toe Stæder sin Skov, som han har indgröfftet og opelsket Træerne samt holder Chreaturerne ude paa den Tiid de kand giöre Skade'.

30. Rigsarkivet, Rentekammeret 432.103.

posed several additions to be made to the clauses on payment for re-allotment in case of disagreement. It should also be possible to appeal decisions made by the Rural Commission. And it was suggested that the new parcels should be distributed by drawing lots. Finally, some hesitation was expressed regarding a kind of temporary commonage mentioned in Hofman's article 9.

In April 1778 the revised plan was accepted through a royal resolution. The experimental nature of the endeavour was unmistakable. Initial enclosures were to take place in either Skanderup or Eltang according to the will of the inhabitants. But after this, it was to be repeated 'in another village in the same county, the forest of which is in the most difficult and diverse condition, where the pasture is, for instance, the common property of others, where there are oak and beech trees or other major trees separately in some places and in addition re-growth, coppice and – here and there – open places etc. The wood shall not only be divided according to its present but also to its future value and situation when regarding the soil conditions, tree species, their growth and fertility inferred from their thickness, their top and root etc. as well as the underwood observing the wicker it can produce when conserved. Trees and scrub are subsequently arranged in different classes and to each proprietor is ascribed in exact correspondence with his previous possession'.[31]

From de Hofman's retrospective description it furthermore appears that the procedure applied was in general compatible with that later dictated by the 1781 ordinance.[32] Firstly, the forest pasture was assessed and compared with the total acreage and it was computed how extensive a parcel each participant should have. After this division, the trees in each lot were valued and those freeholders who now held the most paid their neighbours cash compensation.

Crown wood separation on northern Zealand

A more comprehensive wave of forest enclosure began with the so-called 'separation' (*skovseparation*) of the royal forests in northern Zealand during the 1780's. The enterprise was initiated in 1779 when the head of the royal forest administration –

31. Rigsarkivet, Rentekammeret 331.1-5, 27.04.1778: 'samt desuden ved en anden by i samme amt, hvis skov måtte findes af den vanskeligste og mest forskelligartede beskaffenhed, såsom i hvilken græsningen andre måtte være i fællig, og som indeholdt ege og bøge eller andre store træer særskildte på adskillige steder og tillige ungskov, gærdsel samt hist og her skovløse pladser med videre. Skoven deles ikke alene efter dens nuværende men også dens tilkommende værdi og beskaffenhed, så at der henses til jordartens bonitet, træernes slags, vægt og grøde, som bestemmes efter tykkelsen, toppen og roden m. m. samt underskoven efter den gærdsel samme ved fredning kan afgive, hvorefter træerne og underskoven i forskellige klasser inddeles og enhver lodsejer tillægges fuldkommen jævnet for hvad han hidtil har besiddet.'

32. Hans de Hofmann 1786, as cited in G. Begtrup 1808, pp. 284 f.

since the foregoing year titled *overforstmester* – produced an instruction to outline the procedure. It was formulated as the intention to 'select a piece of woodland where the location provides the means to establish a royal forest to be fenced so that the pasture hitherto possessed by peasants and others as a "beneficiary" right should be abolished as far as possible and transferred to the king'.[33]

To implement such a transfer, the previous holders of grazing rights were entitled to receive some kind of remuneration just as overwood trees outside the future forest fences should in general be felled within a certain time limit. The commission carrying out the separation should as far as possible found it upon local agreements and it should employ a surveyor to draft maps, to compute land measures and to suggest dividing lines.

From an *aide-mémoire* written by *overførster* Claussen in 1780, we are informed in some detail about the procedure.[34] In principle the crown was entitled to separate the woods as it pleased. But if the peasants received no compensation for their loss of grazing rights then they would suffer an irreparable loss which would not only harm them but also their landlord, the royal treasury. So, instead of just enclosing the woods without compensation, individual agreements were reached as to the level and kind of remuneration. These took the form of, for instance, permission to employ underwood lots outside the future wood, to have access to peat cutting and exemption from or reduction of certain taxes. Trees remaining in the arable fields and meadows were cut within a certain time limit, and the stone wall surrounding the conserved wood was financed by the crown but maintained equally by the neighbouring peasants and the *Rentekammer*.

This general *modus operandi* can be followed in a specific example. The inhabitants of the village Grønholt belonged to those crown tenants, whose former woodlots were to be separated and turned into royal *fredskov*. On Saturday 4 August 1781, the Rural Commission met in the village with the three holders of enclosed and outlying farms, Niels Rasmussen, Peder Nielsen and Peder Larsen.[35] The intention was that the first farm should simply be abolished, giving 122 hectares to the new wood. 55 and 0.5 hectares should be acquired from the two others respectively. Finally, an additional 20 hectares of the common village fields were determined to form a part of the future wood. After having confirmed this, the commission perambulated the whole area describing in writing its borderlines.

As remuneration for the appropriated land, Niels Rasmussen was paid 50 *rigsdaler* and allowed to retain the latest yield, the farm buildings etc. Peder Nielsen

33. Cited after A. H. Grøn 1944, p. 13: 'at udsee et Stycke, hvor der efter Situationen kan blive Kongens forbeholdne Skov til Indhegning, saaledes at den Græsning Bønderne og andre saavel som den Rettighed Beneficiario hidintil har havt, saavidt muuligt, aldeles fratrædes, og Kongen overlades'.
34. Rigsarkivet, Rentekammeret 333.193 (10.7.1780).
35. Rigsarkivet, Rentekammeret 252.280.

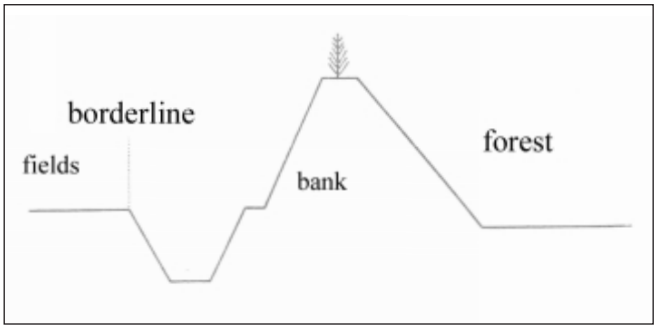

Fig. 35: *The principle of construction for fences around royal forests. After F. Krarup 1949.*

received an additional 5.5 hectares of land, on which he was assured never to pay any rent just as he was excused from maintaining the future woodland fence. Peder Larsen received a parcel from Peder Nielsen's former lands as compensation for the tiny one he lost, and the same applied to those tenants in Grønholt, whose fields were not yet enclosed.

The stone wall around the separated wood was entirely to be paid for by the crown, but when it was established every neighbouring peasant was bound to maintain his part of its exterior. In general, the limits around the separated royal forests of northern Zealand consisted of a ditch and an earth bank or stone wall, on the top of which thorny bushes or other scrub was planted.[36] As both ditch and wall was established on the forest land, the borderline was, in fact, located at outer side of the ditch, i.e. approximately 1.6 meters from the foot of the bank.

In the separation process, numerous trees were obviously left outside the future forest borders. And in the clearing of these former woods and groves, the total woodland acreage experienced a marked decline. On northern Zealand – and later in the country as a whole – the deforestation that immediately came about due to forest enclosure made up approximately one third of the former woodland acreage (see fig. 36).[37] As C. T. Vaupell later remarked, 'the actual Fredskov was only created through the sacrifice of the remaining part of the forest'.[38] When most of the separation was concluded in 1792, the crown still reserved *c.* 48,000 oak trees, 15,500 other deciduous trees and the equivalent of 517,000 cubic meters of beech wood (fuel wood) in peasant fields.[39]

In 1799 a survey was made of the separations undertaken since 1779.[40] Unfortu-

36. A. H. Grøn 1944; F. Krarup 1949.
37. B. Fritzbøger 1992, p. 89.
38. C. T. Vaupell 1862, p. 433: 'Den egentlige Fredskov blav altsaa kun til derved, at en stor Deel af den øvrige Skov blev ofret'.
39. A. Oppermann 1929, p. 80.
40. Rigsarkivet, Rentekammeret 333.193, marked *D*, undated.

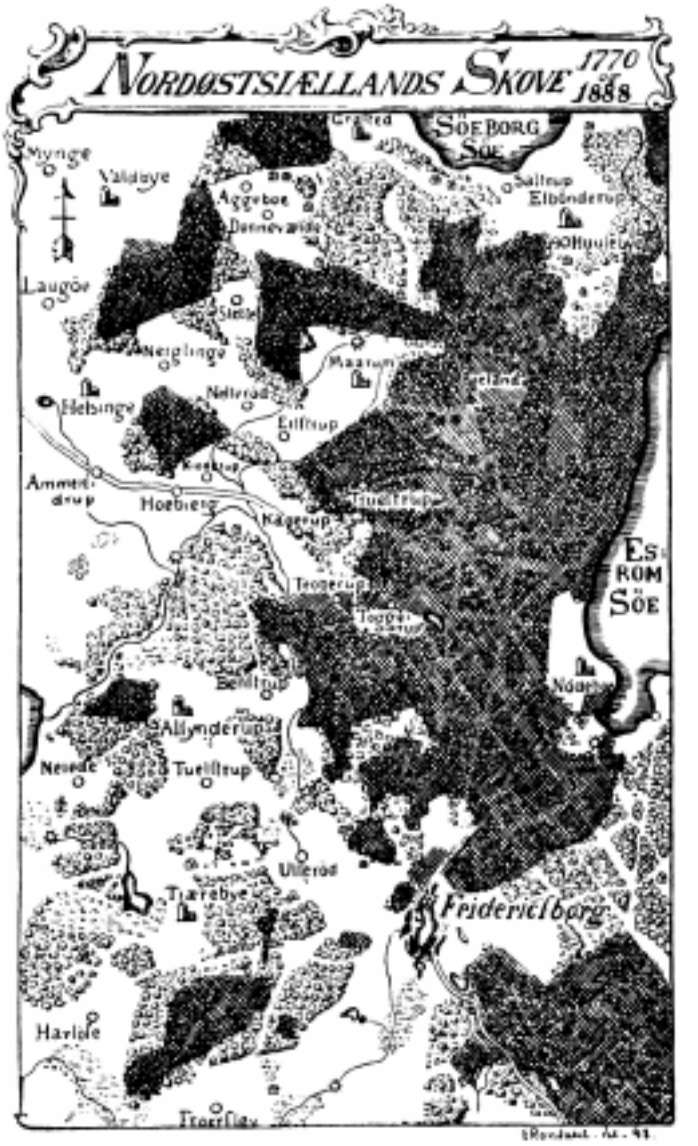

Fig. 36: *The enclosure of woods resulted in a noticeable reduction of their acreage since parts assigned to previous holders of underskov and pasture rights were normally cleared. In this map from A. Oppermann 1899, the dark parts were still covered with woods in 1888 whereas the areas shown as light woodland had been cleared since 1770.*

nately no information is given concerning the date of the individual separations. But it is obvious that the process was by then largely considered as accomplished. In Copenhagen County, 2,386 hectares were separated, in Frederiksborg 524, in Kronborg 6,185 and in Odsherred 588. The single largest separated wood was Gribskov (2,864 hectares) in Kronborg County.

41. The following is based upon Rigsarkivet, Rentekammeret 2485.6-19.

Private forest enclosures

The process of forest enclosure was not only a state initiative. By 1785 the woods of numerous private manors had already been enclosed and some of them even fenced from cattle grazing.[41] The great majority of these wood closes appeared to have been included in the manorial *enemærke*. So in many cases what is recorded is merely the result of those enclosures, by which *enemærker* were established during the sixteenth and seventeenth centuries if not before.

The enclosure of village lands did, however, contribute to the creation and expansion of *enemærke* woods. For, just as the separation in Zealand resulted in closed woods belonging solely to the crown, extensive *enemærke* woods were a frequent outcome when tenant farms were enclosed. The 1787 ordinance (p. 262) prescribed that new woods planted on the arable of former tenancies should not be integrated in the *enemærke*. But regarding woodland management, such woods clearly belonged to the *enemærke*. So considerable areas hitherto considered as peasant land and employed multi-functionally were now transferred to a status of mono-functional *enemærke* wood.

The creation of an enclosed *enemærke* wood belonging to Damsbo estate from peasant woodlots in Jordløse (Funen) is just one example of such a transition. In 1790 the *Landvæsenkommission* met at the request of Damsbo estate (part of Hvedholm estate) in order to enclose and conserve some woodlots previously used by the tenants in the village of Jordløse.[42] The procedure was to follow the 1787 ordinance, but the majority of peasants rejected the idea since they could not do without the pasture. They would, however, consent to the enclosure as long as they could keep both grazing and coppice. This, of course, was unacceptable to the landlord.

As a compromise between these opposing interests, the commission finally decided that it would harm the peasant economy of Jordløse if all woodlots were conserved at once. So the easterly parcels called Tjærehaverne could be separated and conserved without delay, while all peasant rights should be assembled the westerly parcels of Smuttehaverne.

When the reform movement of the late eighteenth century commenced, most overwood had been allotted for centuries. In Brudager, the individual peasant woodlots had in 1784 been enclosed as long as anybody could recall. And several other freehold woodlots were described as 'fenced in from time immemorial'.[43] Frequently, however, as the whole village was enclosed, the need for a renewed distribution of the wood emerged.

In 1785 Rebild Skov (Skørping parish), for example, was described as 'enclosed so that every owner knows and has his woodlots for himself, but in some places the

42. Rigsarkivet, Rentekammeret 3322.400.

43. Rigsarkivet. Rentekammeret 2485.12 (1785): 'indhegnet fra olden tider'.

boundaries have become unrecognisable'.[44] In Hadbjerg (Hadbjerg parish), the freeholders as a specific privilege were allowed to keep their ancient woodlots in the redistribution of the wood during the general village enclosure.

The 1781 act was relatively clear on the issue of forest enclosure. Still, the practical operation involved did not always take place without difficulty. The forests of Sandby and Skovbølle in Lolland belonging to the Christiansdal estate could not be enclosed due to the lack of capable surveyors. And in Vester Karleby an assessment of the wood did not precede the creation and distribution of woodlots, so no one was 'happy' about the allotment and customary common rights continued.

Woodland enclosure often coincided with the redistribution of other geographically but not necessarily economically marginal natural resources.[45] In Linå long discussions about whether enclosure should take place according to *hartkorn* or to customary use concluded with an agreement according to which, 1) the market value of each sort of tree was compared, 2) the wood was detached from the pasture, 3) wood located in the common moorland was distributed in accordance with the moorland parcels so that everybody had to cut down his trees within five years, 4) if two woodlots were located in the same compartment of the forest (*litra*), then the surveyor should distribute them, 5) all coppice, bog and moor lying in a woodlot should pertain to the holder of the lot against remuneration to the others when the common moorland was enclosed, and finally 6) the transaction cost should be distributed according to the wood value.[46]

It is impossible on the basis of prescriptions regulating forest enclosure to conclude to what extent underwood and pasture rights coincided. In one instance, this was clearly the case. The freeholder Claus Johansen in Hals reported that 'in some of my meadows there is some coppice; the overwood consisting of oak and beech the previous owner Mr. Counsellor Duus claimed for himself when he sold; the meadows mentioned are in common and so is, accordingly, the coppice in them'.[47] In 1758 the tenants of Benzonseje on central Zealand each had their individual underwood parcel.[48] And twenty years later, the same was the case for the tenants of Gammelgård and Bådesgård in Hoby (Lolland). In general, a great number of the peasant copses on Funen were described as 'fenced' in 1785. And where this was not the case, as in Årslev, the cattle browsed the scrub so that a local shortage of wicker appeared.

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44. Rigsarkivet, Rentekammeret 2485.14: 'udskiftet så enhver lodsejer ved og har sine skovsparter for sig selv, dog er skel-linien på sine steder blevet ukendelig'.
45. B. Fritzbøger 1996.
46. H. Nielsen 1954-56, p. 53.
47. Rigsarkivet. Rentekammeret 2485.14: 'på nogle af mine enge er lidet gærdselshugst, overskoven af eg og bøg har forrige ejer hr. kammerråd Duus ved købet resolveret sig; samme enge ligger i fællig, altså det derpå stående underskov ligeså'.
48. Godsejerrøster p. 95.

In the eighteenth century, common rights were frequently fixed in tenancy contracts. Consequently, enclosure was often conditioned by revisions of these contracts. So in 1785 the owner of Storgård on Zealand informs the *Rentekammer* that 'when the present tenant is dead or he transfers the farm to another, then the lordship will have 3.2 hectares of the wood fenced to propagate young trees, and when the trees are so big that the cattle cannot hurt them, then the close will be converted to pasture and another parcel of equal size be enclosed and fenced'.[49] Later a similar connection between renewal of tenancy contracts and forest enclosure was found in the extensive Frijsenborg estate in Jutland.[50]

As was the case in the separation of the royal woods on northern Zealand, trees remaining on future arable were distributed between the forest owner and the peasant (whether tenant or freeholder). When Ordrup Skov in the possession of Trudsholm estate was enclosed in 1804, 1490 young beech trees belonging to the landlord afterwards remained in the fields.[51] But here the peasants of Ordrup simply bought the trees from their master. When the tenants of Brahetrolleborg on Funen received their farms as *arvefæste*, 'all the plantations and trees standing in and within the proper border of this farm should be totally cleared or felled before six years reckoned from the issue of this *arvefæste*-letter, if they could not be bestowed to the inhabitants against payment of a fair compensation'.[52]

Vicarage woods were sometimes enclosed and fenced, and sometimes they were not. The minister in Slagslunde complained that 'the progress in this matter was hindered by the opposition of uncomprehending peasants, and as a priest I do not wish to squabble with my congregation'.[53] Normally the vicarage appears to have had its woodlot enclosed simultaneously with the village. But in some cases the vicarage enclosure (both woodland and arable/meadow) preceded the village's. This was the case in Kirke Såby where the vicarage woodlot was enclosed and fenced in 1772, whereas the general village enclosure did not follow until twenty-three years later.[54]

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49. Rigsarkivet, Rentekammeret 2485.7: 'når nuværende arvefæster er død eller afstår gården til en anden, lader herskabet 80.000 kvadratalen af skoven indlukke til unge træers opelskning, og når da de unge træer er så store, at kreaturerne ikke kan skade dem, lægges det indhegnede stykke ud til græs, og et andet stykke af lige størrelse indtages og indlukkes'.
50. Rigsarkivet, Rentekammeret 333.11.
51. Rigsarkivet, Rentekammeret 3322.382 (1806).
52. H. C. Elers Koch 1893, p. 6, note: 'Alle de Plantninger og Træer, som findes paa og inden denne Gaards rette Grænse, skulle inden 6 Aar fra dette Arvefæstebrevs Udstedelse være rent bortryddede eller borthuggede, om de ikke forinden kunne overlades beboerne imod en billig Godtgiörelse'.
53. Rigsarkivet, Rentekammeret 2485.6: 'i fremgangen derudi er hindret ved de uforstandige bønders modsigelse, og som præst gider jeg ikke stride med min menighed'.
54. Rigsarkivet, Rentekammeret 2485.6 (1785).

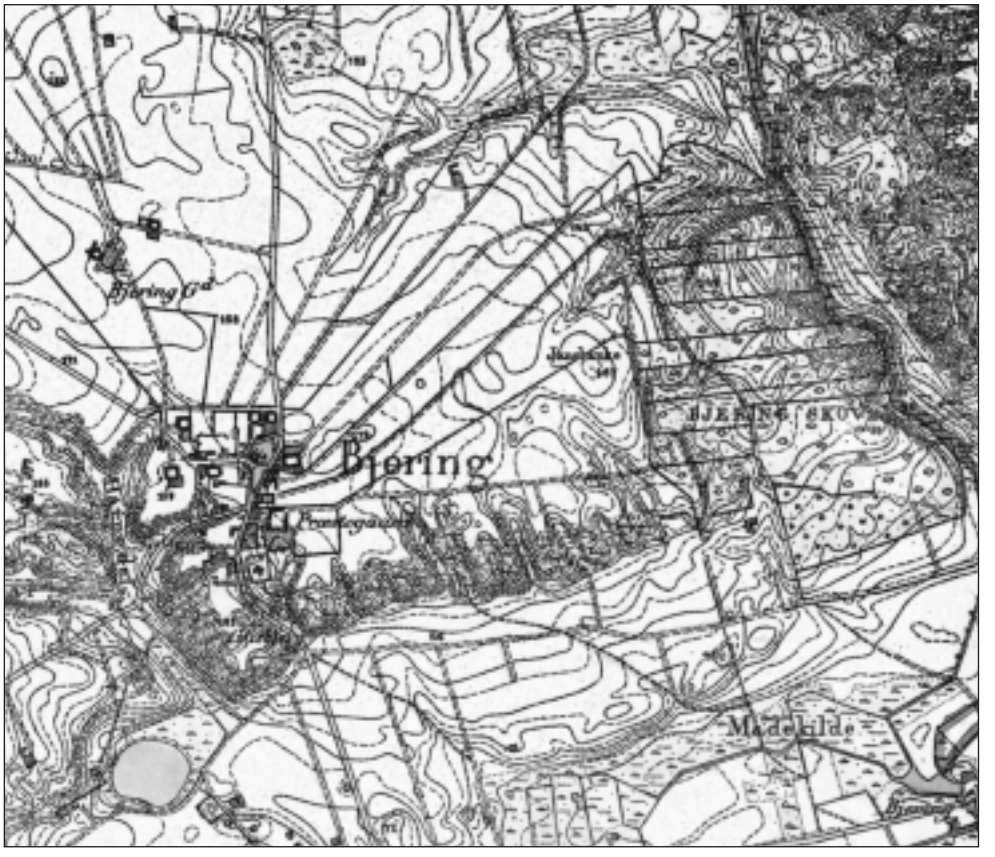

Fig. 37: *The* parcelskov *Bjerring Egeskov in central Jutland as pictured on a print map scale 1:20,000 from 1877-78. © Kort- og Matrikelstyrelsen.*

The enclosure of peasant woods or assignment of wood parcels to peasants as part of the enclosure process could result in one of two physical appearances. Sometimes, a minor wood or grove was located in the main parcel belonging to the enclosed farm. This was the case with farm no. 6 in fig. 34 (p. 277). Such peasant woods were regularly cleared and the ground converted to arable. But in principle nothing prevented the farmer from keeping and propagating his wood as a future supplier of wickers and firewood. In some parts of the country, especially southern Funen and southern Jutland, small woodlots like this were abundant during the nineteenth century.[55]

If the village wood was not fragmented into minor groves but instead appeared as concentrated in one or two places within the village border, a division among the peasants would result in a so-called *parcelskov*, a wood partitioned in the form of the

55. G. Begtrup 1803-12; A. Hofman (Bang) 1843.

letter 'A' in fig. 34 and in exactly the same manner as those thousands of peasant woodlots that had been 'roped' and perambulated since the fifteenth and sixteenth centuries. Now, however, the time-honoured division was frequently altered, common grazing was abolished and ditches or fences were placed on the boundaries. It has been estimated that the enclosure movement resulted in approximately 200 square kilometres of *parcelskov*.[56]

One such *parcelskov* was formed in Bjerring in Central Jutland. In 1785 we are informed that the village oak wood had long been parcelled out among the inhabitants. By 1830 common pasture on the forest floor was still in use, but the individual parcels endured, and today the fifty hectares are divided among twelve owners.[57]

In the nature of things, the employment of *overdrev* was regulated by common rights. And as we have seen, the first enclosure legislation was aimed specifically at these inter-village commons. Yet it appears as if several *overdrev* were divided among the participant villages before 1750. In the small Gevninge Overdrev, 'every village, manor and single farm knows its land according to old borders'.[58] And as mentioned previously, the extensive Særløse Overdrev had already been divided as far as the trees were concerned during the fifteenth century.

According to reports requested by the land commission of 1757, Zealand – the province where this kind of commons was most widespread – had approximately 80 *overdrev* (see fig. 17),[59] and many of them contained minor or major tracts of woodland. It is not possible here to follow the temporal advance of *overdrev* division, but it appears that most *overdrev* where divided by 1805 with only a few being mentioned as common pastures in the annual reports produced for that year (see pp. 289 f).

In Lolland, a major *overdrev* consisting of 570 hectares of overwood, 338 underwood and 1083 open grasslands was enclosed before 1785.[60] It was transformed into 275 hectares of overwood (Kristianssæde Skov) while the rest of the area was divided among the participant villages to be employed as arable and copses. And we must believe that most *overdrev* were enclosed in a similar way.

The extensive Kindertofte Overdrev on southern Zealand experienced a gradual parcelling out in 1772. The owner of Ødemarksgård requested to have the part of the *overdrev* pertaining to his possessions excluded from the prevailing commonage.[61] Apart from Ødemarksgård they included the village Ebberup and the smallholding Kokkehuset. These three settlements were customarily entitled to pas-

56. N. K. Hermansen 1955, p. 382.
57. Rigsarkivet, Rentekammeret 2485.15 (1785); Rigsarkivet, Rentekammeret 3322.411 (1830); Danske Skovdistrikter 2000, p. 295.
58. Godsejerrøster p. 103: 'Hver bye, gaard og torp veed sin grund efter gl. skiæl'.
59. Rigsarkivet, Rentekammeret 431.12-13.
60. Rigsarkivet, Rentekammeret 2485.10.
61. Kort- og Matrikelstyrelsen, Udskiftningssager, Sorø amt 148.

ture of 8, 18 and 2 head of cattle respectively. It was calculated, therefore, how large an acreage each head equalled (in different parts of the *overdrev* where the number of trees varied), and finally the three settlements had their parcels measured out in their immediate vicinity.

Nineteen years after this first parcelling out of Kindertofte Overdrev, the owner of Store Frederikslund – an estate created by the sale of the crown lands in 1774 – was allowed to establish a conserved forest in the *overdrev* and in parts of the village fields of Grøfte.[62] In order to achieve this goal, he was allowed to abolish 2-3 farmsteads in Kindertofte and Grøfte so that the remaining tenants could receive due compensation for the loss of pasture. Yet in the place of each abolished farm he was committed to build two houses with 2-3 hectares of adjoining land.

As outlined in the Enclosure Act of 1781 and exercised during the separation of crown woods, former holders of grazing rights were entitled to remuneration (*græsningsvederlag*) when their herd was excluded from the forest. In most cases, the compensation consisted of grassland in the more open parts of the forest. This was the case in Søborg and Esbønderup, where the crown tenants first received 114 hectares of Esbønderup *Overdrev* as grazing compensation.[63] But as it was convenient for forest plantation, it was later converted to liquid assets, 5 *rigsdaler* per *tønde land*.

Compensation could, then, also consist of cash payment or allowances. Besides, a forest owner with a large wood would often avoid reducing it by enclosure. Instead he was allowed to abolish a tenant farm in order to render the necessary compensation, as happened to Niels Rasmussen in Grønholt (p. 279) and to the tenants in Grøfte and Kindertofte. Through such abolition, the landlord would obviously take into account which tenants he could best do without. When one out of eight farms in Sørup on Falster was to be abolished in order to conserve the forest in 1789, the tenancy of Morten Skytte was chosen since he was a qualified weaver who would be able to support his family by his craft.[64]

Numerous tenant farms – exactly how many is unknown – appear to have been deserted in order indirectly to conserve and propagate newly enclosed woods.[65] In Sorø Academy, 55 holdings had been abolished by 1800 for this reason.[66] In the extensive lands belonging the Det Classenske Fideikommis on Falster, the corresponding number was 23. And on northern Zealand, the entire hamlet of Ulkerup was abolished in order to create a consolidated *fredskov*. At that time, the inhabitants

62. Rigsarkivet, Rentekammeret 2481.1, no. 125; Kort- og Matrikelstyrelsen, Ehlers Sager 19-20.
63. Rigsarkivet, Rentekammeret 2481.1, no. 743.
64. Landsarkivet Nykøbing amt, Landvæsenskommissionsprotokol 1, pp. 11v-12r.
65. G. Begtrup 1803, p. 318; A. Linvald 1923, p. 257.
66. F. Skrubbeltrang 1940, p. 317.

were still suffering from the economic setbacks of recurrent outbursts of cattle plague.[67] Conversely, the owner of Holsegård (Funen) supposedly abstained from enclosure of tenant woods since he could find no way to remunerate for the loss of pasture.[68]

The abolition of peasant holdings in order to enclose and conserve the wood expresses better than many a grandiloquent author the emphasis on forest management characterising the reform period. Nevertheless, the trees were not always given higher priority. In the fertile meadows of eastern Ålborg County, Wilhelm Warnstedt in 1810 describes how 'the marvellous humid soil induces many forest owners to enlarge their haymaking by extinction of the underwood when the owner of the overwood has removed his'.[69]

67. B. Fonnesbech-Wulff 1991.
68. Rigsarkivet. Rentekammeret 2485.10 (1785).
69. Rigsarkivet, Rentekammeret 333.11: 'die treffliche wiesengründige Boden-Beschaffenheit verleitet manchen Grundbesitzer zur Erweiterung seiner Heubergung durch Ausrahtung des Unterholzes, nachdem der Oberholz-Besitzer das seinige weggeräumt hat'.

Chapter 19

The final abolition of wood commons 1805-1830

Methodological considerations

The Forest Conservation Act most manifestly differed from previous legislation in its passages on supervision and annual reports. According to its paragraphs 12 and 18, the county governors each year had to notify the royal *Rentekammer* whether the woods in their county were enclosed and conserved or not. Two months after the issue of the act, a circular explained how these reports should be made and what they were supposed to include, i.e. 1) name, 2) size, 3) name of the owner, 4) if any kind of common rights did persist, 5) if allotment and enclosure was initiated but not fulfilled and then why not, 6) if allotment and enclosure was initiated and terminated and then when this had happened and whether the trees had been removed from the lands compensating the former holders of pasture rights, 7) if the wood was conserved, and if so how, 8) if any kind of silviculture took place and 9) if the Act was in any way violated.[1]

The annual reports from the governors are largely but not exhaustively conserved in two forms. In some cases, the original estate accounts to the governor exist; in others just the summary made by the latter. Still, spot checks suggest that the contents of the two sources of information are, in general, identical as, indeed, they should be.

From the governor's summaries, the post-1805 national progress of woodland enclosure and conservation can be analysed, albeit not in great detail. As pointed out by Peter Friis Møller, the reports tend to employ the same wording year after year,[2] and should, therefore, only be expected to reflect major changes. At the same time, the reports are in general reliable regarding positive evidence whereas they can hardly be considered as exhaustive when it comes to negative judgments.[3] In

1. Kongelige Rescripter VI:13, pp. 363 ff.
2. P. Friis Møller 1984, p. 28; for a methodological assessment of the reports, see also T. Toftegård Knudsen 1994; the material has been employed in an unpublished regional investigation by J. Pedersen 1972.
3. A. Oppermann 1914.

general, the governor relied on owners' reports, but to give false information was, of course, illegal and punishable. To monitor the reports, a number of special inspectors were sent out to evaluate the actual compliance with the Act in 1810.[4] They did find some discrepancies between the annual reports and the reality they met when they visited the larger estates. Wilhelm Warnstedt found both Pindstrup and Eldrup Skov under Stenalt estate to be grazed 'whereas the exact opposite was accounted in the county-report'.[5] But such disparities were in general insignificant.

When employed to describe particular woods, the reports are heavily lacking in detail. But used as serial data in a quantitative investigation, the governor reports are unrivalled. Yet the question remains as to how geographically exhaustive the information given by the reports actually is.

The first reports were all made in the winter 1805-6, but of a total of seventeen counties[6] three can only produce somewhat later evidence. The first report from Holbæk County is dated 1815, that from Sorø 1816 and, finally, the one from Thisted 1832. So, to analyse the state *c.* 1805, those three counties must be excluded. All counties are represented with reports *c.* 1830, the temporal limit of this investigation.

It is, however, not permissible to consider the reports as exhaustive within each county as that would mean to presume that all woods are described. To account for the methodological reliability of the material, a comparison was made between a list of the parishes included in the reports and a comparable record of those in which woodland (*fredskov*) was found in early nineteenth century cadastral maps.[7] 96 parishes were discovered to have wood without any reports apparently having being made. Yet from this total the woods of 34 parishes belonged to the crown and were, consequently, not covered by the Forest Conservation Act. The woods of a further 18 parishes are appraised as belonging to estates, from which the reports were so vaguely phrased that they make a positive, geographical localization impossible. Of the remaining 44, the majority (28) belonged to estates, from which positively no reports were submitted.

To assess this conclusion, an additional test analysis was carried out. The number of estates displayed with adjacent forest in a historical atlas was compared with the 1805 records.[8] From this a further 14 estates were added to the 28 mentioned above. From half of this total, a report series does exist but it does not begin until some time during the period 1807-25. From the other half, no reports are found whatsoever. Still, this should be set against a total of 552 woodland parishes.

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4. Rigsarkivet, Rentekammeret 333,11, 333.41 and 3322.400.
5. Rigsarkivet, Rentekammeret 333.11: 'wenn gleich das Gegentheil im Amts-Verzeichniss angegeben ist'.
6. Ålborg county was included in Hjørring and from 1808 Roskilde was included in Copenhagen county; K.-E. Frandsen 1984 II, p. 89, note 31.
7. A. F. Bergsøe 1844, pp. 31-102; B. Fritzbøger 1992, pp. 86 f.
8. K.-E. Frandsen 1984.

Hence, when adding an unknown number of parishes with only copses, it appears that the 1805 county reports cover roughly nine out of ten woods. Not all reports include exact information on acreage, but, when computing those that do, it appears that the material covers nearly three quarters of the total privately owned woodland acreage of Denmark.

It is not always evident from the wording of the reports, if common rights were horizontal or vertical, i.e. if they represented the collateral usage of the same resource (e.g. the overwood trees) by several users or the coinciding employment of different resources (e.g. trees and pasture) in the same area. Cases of uncertainty have, consequently, been left out of the following summaries. The same applies to those estates from which only a summary report was sent in.

To study the progress of woodland enclosure, this first cohort (consisting of information about 3760 small and large woods) was compared with a similar one *c.* 1830. This comparison was, however, not uncomplicated. Only 1745 woods from the 1805 data were re-identified in *c.* 1830. On the other hand, a further 985 woods were described in this year.

This could suggest that the 1805 series is not as exhaustive as contended above. But, as the 1830 data ultimately relate to post-reform woodland, it is very likely that wood names have changed and that their overall number is, in general, reduced. This notion could be supported by the development in woodland acreages reported in 1805 and 1830 respectively. On average the size of those woods for which the acreage are reported was 26.5 hectares in 1805 but 35.3 in 1830. In the extensive forest complex, Rold Skov in Jutland, the names of minor parts such as Avnbakkerne, Bjergene, Hestehaven and Hyberne mentioned separately in 1805 were clearly assimilated in larger units twenty-five years later.

The procedure

In 1823 the parts of Fjeld Skov in Jutland belonging to Gammel Estrup and Holbækgård – some 732.8 hectares – were enclosed.[9] The well-described procedure employed during this process might serve as a general example.[10] Initially the wood was assessed in accordance with the valuation employed in the cadastre currently in use (produced since 1804 but not valid until 1844) in which the best arable was valued as class 24. The requirements for grazing of one *høved* was estimated to be 8.8 hectares (16 *tønder land*) but as parts of the area would be taken over by heather when the wood was cleared this figure was raised to 11 (20 *tønder land*). As the value

9. N. R. Estrup 1942.
10. For a general description, see V. E. Pedersen 1966, pp. 46 ff.

of one *høved* equalled $^1/_3$ of the best arable, the pasture was assessed as class 24:(16:$^1/_3$) = $^1/_2$. But when the trees were felled, the class would be 24:(20:$^1/_3$) = $^2/_5$. Used as arable – after clearing – the land was only assessed as class 2 and grazing in some minor wetlands was estimated as class $^1/_4$. As the adjoining arable fields of the villages Pindstrup and Klemstrup were included in the enclosure, they were assessed to be class 4, 6 and 8.

After this appraisal an enclosure plan was produced. Firstly, the wood parcel belonging to Gammel Estrup was exempted from the enclosure, as it consisted of old wood in which nobody held pasture rights. Secondly, as the pasture would lose in quality if the eastern part of the forest was cleared and win slightly if the western part was cleared, it was decided that the parcel retracted from the wood should instead be converted to arable. Thirdly, as the western part of the wood was in the best condition, it was decided that it should remain woodland together with two parts in the east. The third part of the eastern half was designated as remuneration to the former holders of grazing rights according to the assessment mentioned earlier. Furthermore, those tenants who held strips of arable within the future woodland border received compensation in its fringes. So in this case the enclosure resulted in a reduced acreage but a more condensed figure.

The progress of enclosure 1805-30

In 1805-6 one third of all woods were still used simultaneously by their owner (for trees) and his tenants (for pasture). Apart from a number of fenced woodlots, the majority of these woods were also characterised by a horizontal commonage among the holders of grazing rights. As we have seen, the enclosure movement was in force decades before the Forest Conservation Act of 1805, and two thirds of all woods – at least those from which reports were made – had already been enclosed when it was issued. Naturally, *enemærke* woods without peasant pasture made up a considerable – maybe even a major – part of this share. Still, *enemærke* woods might have an overrepresentation since freehold peasants would be expected not to report as adequately as the officials of large estates.

Legislation seems to have succeeded in the attempts it had been pursuing since the early sixteenth century to eliminate horizontal woodland commonage regarding the overwood. Indistinct common rights to their overwood trees distinguished only 51 woods.

In 1830 the number of woods in horizontal commonage was reduced to 33. And it appears that the process of reduction accelerated during the period. Those common woods on which acreage is recorded totalled 10,660 hectares. In the official statistics of 1837, which should not be considered as altogether reliable on the matter, this total was reduced to 2,355. As in 1805, the vertical commonage was in

Table 5: *Forest enclosure and conservation reports c. 1805 and 1830 by county.*

County	No. of woods 1805*	No. of woods 1830	No. of overlapping 1805-1830	No. of woods with acreage-information 1805	Their total acreage (hectares)	Estimated total acreage of all 1805-woods	Acreage of fredskov c. 1800	No. of woods with horizontal commonage 1805	No. of woods with vertical commonage 1805	No. of conserved woods 1805	No. of woods with horizontal commonage 1830	No. of woods with vertical commonage 1830	No. of conserved woods 1830
Copenhagen	114	78	59	106	4,273.6	4,991.8	7,484.4	–	27	48	–	12	51
Frederiksborg	23	5	5	20	678.2	758.0	17,611.6	–	1	15	–	–	5
Holbæk	108	109	83	93	3,968.9	5,059.5	5,374.1	–	7	65	1	3	88
Sorø	197	175	146	140	8,061.2	10,375.4	11,955.9	–	14	145	–	8	158
Præstø	352	268	201	332	11,569.1	13,883.3	15,748.2	6	88	153	2	18	235
Odense	782	270	134	729	6,619.1	11,726.3	3,228.0	5	190	207	–	16	182
Svendborg	653	362	272	597	10,885.7	14,955.5	8,820.9	4	242	301	–	48	275
Maribo	515	488	295	492	16,515.5	21,261.1	14,734.5	17	164	257	5	57	412
Hjørring	114	65	64	81	4,286.8	5,191.2	858.6	–	48	1	–	29	16
Ålborg	118	62	58	75	4,856.7	6,106.9	3,380.9	2	56	12	7	10	24
Thisted	17	–	–	17	50.2	50.2	22.0	1	1	17	–	–	–
Viborg	158	86	75	117	3,470.6	4,853.8	2,285.3	3	87	19	2	38	26
Randers	232	167	155	191	6,158.5	7,568.3	5,397.2	5	79	31	6	26	100
Århus	211	418	133	172	4,377.4	13,022.4	4,786.1	1	127	37	5	117	130
Vejle	398	347	245	274	4,459.7	10,471.3	5,119.4	5	154	91	3	63	157
Ringkøbing	22	10	10	21	1,713.3	1,739.9	19.3	2	6	1	–	–	2
Ribe	68	49	39	40	691.3	1,702.1	425.7	1	12	16	1	9	15
Total **	**3,760**	**2,959**	**1,745**	**4,984**	**80,555.5**	**119,258.5**	**107,251.7**	**51**	**1,281**	**1,189**	**33**	**454**	**1,876**

Notes: * Holbæk 1815, Sorø 1816 and Thisted 1823; ** excluding Holbæk, Sorø and Thisted 1805

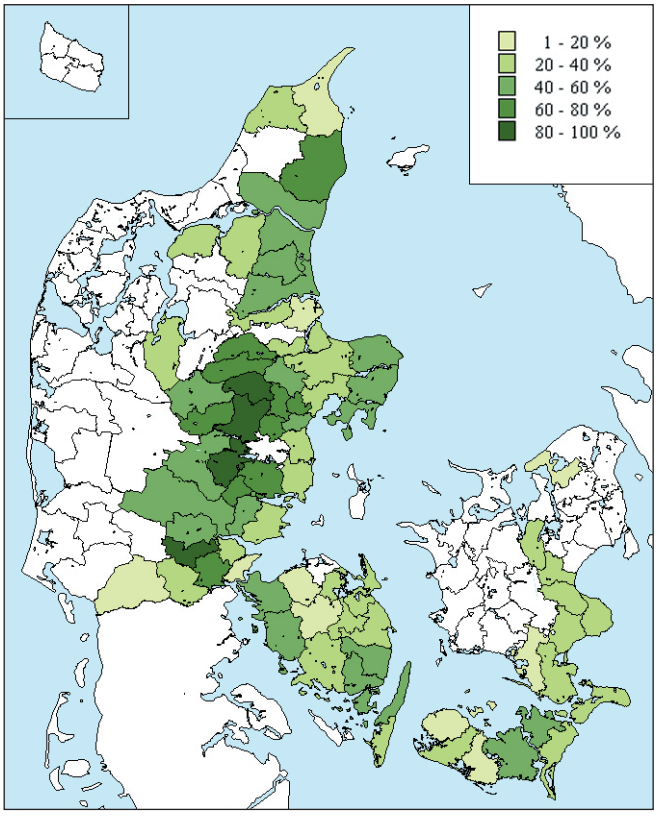

Fig. 38: The relative prevalence (number of woods) of vertical woodland commonage between lord and tenant c. 1805 distributed according to districts.

most cases one between a forest owner and the holders of grazing rights. Common woods were, in general, smaller than enclosed woods.

The extensive serial data from *c.* 1805 and *c.* 1830 give a detailed picture of both regional and temporal diversities in the gradual process of enclosure and conservation. In 1805 all overwood in Copenhagens County[11] was allotted, whereas a vertical commonage between trees and pasture took place in 25.2 % of all woods. In general, it proves difficult to determine whether the overwood enclosure was recent or not. Ølby Ås is reported to have been allotted between Gammel Køgegård, Duebrødre Abbey, the University, Vartov and Vallø in 1790, but 'each owner should keep his old woodlots together and cut individually in its lots'.[12] The pasture was common for the tenants of Ølby.

In 1830 the relative number of vertical commons was reduced to 15.6 %. Commonage still prevailed in, for instance, Vester Såby Vester- and Østerskov, which

11. Consisting of Sokkelund, Smørum, Sømme, Tune, Ramsø and Voldborg district.
12. Rigsarkivet, Rentekammeret 3322.382: 'hver lodsejer skulle beholde sine gamle skovskifter i samling og hugge hver for sig på sine skifter'.

belonged to Åstrup estate. Both the woods were, in fact, enclosed, but the peasants retained their grazing rights until the current tenants were replaced. In 1815 the lord had further fenced one fifth of the wood to be conserved. Most likely this happened according to article 7 of the Act.

As in Copenhagen County, the insignificant non-crown overwood in Frederiksborg County[13] was enclosed everywhere. Only in Havelse Skov did common rights between trees and ground exist. Still, the nature of this commonage is enigmatic. The report states that the crown prince owned the trees, whereas unspecified peasants owned the land. In 1830, when Havelse Skov was not mentioned, no further common woodland rights persisted.

As noted, no consistent series of reports from Holbæk County[14] exists before 1815. So a diachronic analysis cannot be made. In only 2.8% of the woods did common grazing rights continue until 1830. But it is not perfectly clear whether the underwood always followed the overwood in its allotment. In principle, it could either follow the overwood lots, or it could be partitioned independently of the overwood or it could remain in a state of horizontal commonage among the tenants.[15] So it is remarkable when the agronomist Gregers Begtrup informs us that on the Røsnæs peninsular, captain Stub has conserved his coppice wood and divided it into certain lots 'so that every farm has its distinctive part in which no one except the farmer is allowed to cut albeit under supervision'.[16] In this case, it appears that underwood allotment did not take place until the general wave of enclosures during the late eighteenth century.

In 1830 there were no overwood commons in Sorø County[17], and only in 4.6% was commonage between wood and grazing rights found. The extensive woods belonging to the Academy in Sorø are not included in the county-reports, since they were treated as crown woods. From other sources it is, however, established that most of them were enclosed before 1805.[18]

In Præstø County,[19] six unallotted overwoods were found in 1805-6. Four of them were located in Bogø, and the two others were Røstofte Kohave (77.0 hectares) and Eskilstrup Skov (82.5 hectares), where the ground was allotted whereas the trees were owned in common by Lindersvold estate and the Holstein Rathlou family. The verb

13. Consisting of Horns, Ølstykke, Strø and Holbo districts together with Lynge-Frederiksborg, Kronborg and Hørsholm districts.
14. Consisting of Tuse, Merløse, Ods, Skippinge, Ars, Løve and Samsø districts.
15. B. Fritzbøger 1994, p. 153 ff.
16. G. Begtrup 1803, p. 316: 'enhver Gaard har sin bestemte Part, hvori ingen har Tilladelse at hugge uden Bonden selv, og det dog under Opsigt'.
17. Consisting of Ringsted, Alsted, Vester Flakkebjerg, Øster Flakkebjerg and Slagelse districts.
18. Rentekammeret 2485.7; G. Begtrup 1803, p. 335; A. Oppermann 1931.
19. Consisting of Bårse, Tybjerg, Hammer, Stevns, Fakse, Bjæverskov and Mønbo districts.

used is *delt*, which is ambiguous (see p. 133). In the present context it appears to signify two parties sharing the same resource, though that interpretation is uncertain.

88 woods (25.9 %) were characterised by a vertical commonage between lord and tenants or between the owners of trees in a wood located in the open village fields. This was the case in Allerslev Præsteskov, the wood pertaining to Allerslev vicarage. From the 1785 report we know that 'this wood lies near the vicarage, its length and width is recognised by means of boundary trees, but apart from this the wood on both sides lies in common with the lord's wood and is not enclosed. When the wood is not tilled by the tenants of Rekkende and Tjørnehoved but lies fallow, then the vicar has access to the wood pasture together with the peasants of the mentioned village'.[20] In 1830 vertical commons still existed in 18 woods (6.8 %).

Bornholm had just one major wood, Almindingen, which was owned by the crown. This is probably the reason why no reports on compliance with the Forest Conservation Act exist. Yet in 1816 the royal *overførster*, Bernhard Wilhelm Linstow, made a supervisory journey to the island in order to inspect not only Almindingen but also the smaller private woods. According to the calculation of the county governor, Bornholm had 2124 hectares of private woodland. But 'these privately owned woods are distributed on the entire island in numerous small groves or so-called wood-strips and copses, traversed by meadows and arable fields, which greatly embellish the land. Most of the freeholders possess a number of groves for their farm but none of them have been conserved. To do so would also result in manifold obstacles, since a universal and for that island highly beneficial enclosure ought to precede conservation. For these petty peasant woods lie together in irregular polygons and they are commonly owned by various holders'.[21]

So apparently unspecified common rights still dominated the woodland management of Bornholm in 1816. Linstow describes the somewhat strained relation between the crown and some freeholders regarding one such wood. Strandskoven in Rø parish belonged to 'the freehold farms nos. 5, 7, 8 and 9, whose owners were granted the property based upon prescriptive rights through an unextenuated but not necessarily accurate judgement of the provincial court from 8 April 1804; but the land belongs to his Majesty since it is part of *Udmarken* […] the four freeholders

20. Rentekammeret 2485.9: 'Denne skov ligger ved præstegården ved skeltræer ved man dens længde og bredde, men ivørigt ligge skoven på begge sider i forening med herskabets skov, og er ej udskiftet. Når skoven ej pløjes af Rekkende og Tjørnehoveds gårdmænd, men ligger til fælled, har præsten her græsgang på skovfælleden med bemeldte bys bønder'.

21. Rigsarkivet, Rentekammeret 333.69: 'disse privatskove er fordelte på hele landet i mangfoldige små lunde eller såkaldede skovrener og busketter, der er igennemskårne med enge og agre, hvilket meget forskønner landet. De fleste selvejere besidder en del skovlunde til deres gård, hvoraf dog ingen er indfredede, hvilket også ville være forbundet med mangfoldige vanskeligheder, da en almindelig og for landet højst velgørende udskiftning bør forudgå; thi disse små bønderskove løber i uregelrette figurer i hverandre, og ejes som oftest af mangfoldige jordbrugere'.

have petitioned to receive it as either tenancy or property, but their neighbours who use it for pasture have remonstrated'.[22]

In 25.2 % of all woods in Odense County,[23] customary common rights persisted in 1805 – the tenant's grazing rights in woods owned by his landlord. But other combinations did occur. In Brahesborg estate the tenants possessed land and coppice but not the grazing. In just one wood, Brenderup Skov, horizontal overwood commonage prevailed. Yet it appears that this was a novel arrangement rather than the extension of ancient custom. For five freeholders, including the local minister, had recently bought the wood from the Gyldensten estate. But the individual parts belonging to each of the buyers was not 'definitely determined'.[24] From 1830 reports on 270 woods we no longer find traces of a common exploitation of the overwood. But in 16 (6.0 %), a vertical commonage continued.

During his supervisory journey to Svendborg County[25] in 1810, F. von Krogh visited twenty-one major estates and his account to the *Rentekammer* describes in detail the state of each of their woods. In a specific space in his schematic inquests he notes whether major discrepancies *vis-à-vis* the 1805-6 reports were found. Most of his supplementary remarks, however, concern silvicultural matters.

According to the 1830 reports, no overwood commonage was perpetuated at this time, twenty-five years after the act. In 13.3 % of the woods shared usage of grazing and trees continued, but in the great majority all kinds of common rights were dissolved. This was the case in Måre Hestehave (Herrested parish) where the customary peasant rights to exploit pasture and coppice, were converted into a legal claim to be allowed wicker.

Almost one third of all woods in Maribo County[26] were still not enclosed but characterised by vertical commonage by 1805. This could still be found, as in Østerskoven in northern Falster, where 18 freeholders from Gundslevmagle owned the allotted land, whereas they shared the use of the trees with 14 peasants from Skerne and 12 from Maglebrænde. The most peculiar forest of Maribo amt was still Frejlev Skov (see p. 205) where the tenants appropriated 'the overwood according to ancient rulings but the land belongs to Christiansholm'.[27]

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22. Rigsarkivet, Rentekammeret 333.69: 'selvejergårdene nr. 5, 7, 8 og 9, hvis ejere ved usvækket men muligen derfor ikke rigtig landstingsdom af 8. april 1804 er tilkendt ejendommen over den på grund af formentlig hævd; men grunden er hans majestæt tilhørende, da den er en del af Udmarken [...] Disse 4 selvejere har ansøgt, at erholde enten fæste eller ejendom på grunden, hvorimod de omgrænsende bønder, der tillige afbenytter græsningen, har gjort indsigelse'.
23. Consisting of Odense, Bjerge, Åsum, Lunde, Skam, Skovby, Båg and Vends districts.
24. Rigsarkivet, Rentekammeret 3322.396: 'aldeles bestemt'.
25. Consisting of Vindinge, Gudme, Sunds, Sallinge, Langelands Nørre and Langelands Sønder districts.
26. Consisting of Musse, Fuglse, Lollands Nørre, Lollands Sønder, Falsters Nørre and Falsters Sønder districts.
27. Rigsarkivet, Rentekammeret 333.71: 'Frejlev fæstebønder tilegner sig overskoven efter gamle domme, men grunden tilhører grevskabet Christiansholm'.

In 1830 11.9% of the woods were considered as common as regards the shared usage of pasture and wood. The village inhabitants of Sortsø and Virket on northern Falster are reported to own the woods 'in common' (*i fællesskab*). Still, it is highly doubtful if this wording has any other import than that the woods were field woods. At least, this had been the case in 1719.[28]

The ancient custom of each farm having more woodlots is reflected in the common woods. Bjerremarken in Tågerup was enclosed in 1795, and in 1834 we are told that 'the wood belonging to the vicarage lies in common with the farmers of Tågerup parish so that they as well as the vicar have obtained 2-3 lots in different places; they are used for haymaking, coppicing and for pasture in the autumn'.[29]

Turning to Jutland, common usage took place in four out of ten woods in Hjørring County by 1805.[30] And this fraction remained largely unaltered twenty-five years later. In Ålborg County[31], half of all woods by 1805 had some kind of common usage or another. Shared employment of the overwood appears only to have come about in three instances. Still, the exact impact of the alleged commonage in all these cases remains obscure.

One of the more intricate woodland commons that might have included elements of a shared overwood was found in the peasant woods of Als parish. Frederik von Arenstorff (Visborggård) and Thyge Thygesen (Dalsgård) owned it, and we are told that 'chamberlain Arenstorff in Visborggård owns the land in approximately two thirds of the wood and the tenants of Visborggård in Als obtained the pasture through enclosure. Thygesen himself owns the remaining third of the ground and the tenants of his estate in the aforementioned village use the pasture. […] No enclosure can take place except for the part of the forest that belongs to Thygesen and where his tenants employ the grazing. For major Arenstorff, who sold the wood to Thygesen, has sold him nothing more than the trees and he has reserved for himself all rights to the land which he has conveyed to his father, chamberlain Arenstorff in Visborggård'.[32] As Wilhelm Warnstedt inspected the forest in 1810, he noted that

28. B. Fritzbøger 1989B, p. 252, 255.
29. Rigsarkivet, Rentekammeret 3322.393: 'Præstegårdens skov ligger i fællig med Tågerup sogns gårdbeboere, dog at disse såvel som præsten have erholdt 2 à 3 stykker på forskellige steder; disse benyttes til høslæt, hegningshugst samt til græsning om efteråret'.
30. Consisting of Horns, Vennebjerg, Dronninglund, Børglum, Hverbo and Øster Han districts.
31. Consisting of Kær, Hornum, Fleskum, Hellum, Hindsted, Års, Slet and Gislum districts.
32. Rigsarkivet, Rentekammeret 3322.407: 'Kammerherre Arensdorf på Visborggård ejer grunden, omtrent 2/3 delen af skoven og Visborggårds bønder i Als by er ved udskiftningen tillagt græsningen. Thygesen ejer selv den øvrige 1/3 af grunden og hans godses bønder i bemeldte by afbenytter græsningen […] Her kan ingen udskiftning finde sted uden på den del af skoven, som tilhører Thygesen og hvorpå hans godses bønder bruger græsningen. Thi major Arenstorff, som har solgt Thygesen skoven, har ikke solgt ham andet end træerne og forbeholdt sig al rettighed til grunden, hvilken han har overladt til sin fader kammerherre Arensdorff på Visborggård'.

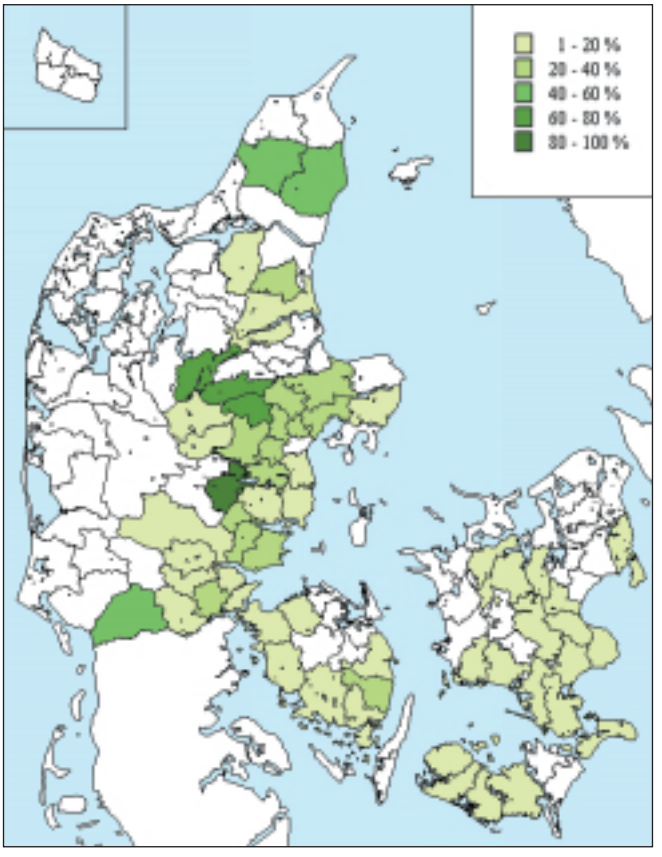

Fig. 39: The relative prevalence (number of woods) of vertical woodland commonage between lord and tenant c. 1830 distributed in districts.

it had been almost totally ruined by Thygesen, who afterwards had subsequently sold his share to a tanner named Møller in Ålborg.[33]

From his supervisory journey we have an elaborate description of several woods amplifying the 1805 reports. He emphasises *inter alia* how the Forest Conservation Act was abused in Hals Nørreskov where almost three quarters of the woodland acreage was employed to remunerate grazing rights leaving only one fourth as conserved wood. On Melholt and Hou Skov near Hals we are informed that more owners possess them in 'confused commonage'.[34]

We have 62 reports on forests in Ålborg County from 1830. 16.4 % of these were reported to have vertical commonage between forest owners and holders of grazing rights. But, which is more surprising, we find the highest national frequency of overwood commons (11.5 %). They were concentrated in two areas. In Als parish 'certain sorts of trees and up to a specific size were obtained by the tenants as their lands

33. Rigsarkivet, Rentekammeret 333.11.

34. Rigsarkivet, Rentekammeret 333.11: 'verwickelter Gemeinschaft'.

were sold from the estate, and they have subsequently been sold to others than those who own the ground and the overwood'.[35] So apparently the tenants kept the underwood, the possession of which they transferred to others resulting in a situation where overwood, underwood and land were distributed among differing legal persons.

The other cluster of overwood commons was located in the extensive Rold Skov complex in central Himmerland. Here the crown, Villestrup, Store Restrup, the Mylenbergske Fideicommis and Buderupholm, jointly owned Ritmesterskoven, Skørpinglund, Vedsted Skov, Bødkerskoven and Rebild Skov.

Since prehistoric times, Thisted County[36] had only been sparsely wooded.[37] Unfortunately, the first county reports are from 1832 so no diachronic analysis has been feasible. Seventeen woods with a total acreage of 50 hectares were then surveyed. But out of them 15 were coniferous plantations established during the 1820's. The only substantial forest was Højris in Lørslev parish (19.8 hectares).

By 1805 57.2 % of all woods in Viborg County[38] were common as regards the parallel usage of grazing and trees. This was the case in Houlbjerg and Kongstrup (Houlbjerg parish) where the tenants of Frijsenborg 'from time immemorial had pasture for their animals in the wood, no other reason for their rights is known'.[39]

Nine woods were subject to overwood commonage. In Levring Krat (Levring parish) ground and pasture was shared between two farms of the village whereas 21 freeholders and 7 cottagers possessed the trees jointly 'everyone according to his *hartkorn*'.[40] In the same parish, Døssing Krog consisting of some old oak trees was shared between four farmers so that 'every one of these men owns his part of the land. The trees they own jointly. The grazing belongs to the owner of the land'.[41]

On his 1810 journey, Wilhelm Warnstedt visited 13 estates in Viborg County. He noticed that on the Aunsbjerg estate approximately one fifth of the woods was set aside as compensation to the holders of grazing rights while the remaining four were planned to be conserved even if no fence had yet been set up. On the estates of

35. Rigsarkivet, Rentekammeret 3322.410: 'visse slags træer og til en vis størrelse ved 1. afhændelse fra hovedgården af ejendommen til fæsterne blev forbeholdt, og er siden igen solgt til andre end de, som ejer grunden og overskoven'.
36. Consisting of Vester Han, Hillerslev, Hundborg, Hassing, Refs, Morsø Sønder and Morsø Nørre districts.
37. S. T. Andersen 1992.
38. Consisting of Læsø, Nørlyng, Rinds, Sønderlyng, Middelsom, Houlbjerg, Lysgård, Fjends, Hindborg, Nørre, Harre and Rødding districts.
39. Rigsarkivet, Rentekammeret 3322.311: 'af Arilds tid haft græsningen i skoven til deres kreaturer, anden årsag vides ej som grund til deres rettighed'.
40. Rigsarkivet, Rentekammeret 3322.311: 'enhver efter sit hartkorn'.
41. Rigsarkivet, Rentekammeret 3322.311: 'enhver af disse mænd ejer sin part af grunden. Træerne ejer de med hinanden. Græsningen tilhører grundejeren'.

Viskum and Himmestrup the woods were in general neither enclosed nor conserved. In Frisholt an enclosure plan had been generated and it now awaited the acquiescence of the prominent silviculturalist *overførster*, Georg Wilhelm Brüel.

From 1830 we only have reports about 86 woods in Viborg County, in none of which we find overwood commonage. 38 (44.2 %) were described as vertical commons so the level of common ownership remained high in central Jutland.

Approximately one third of the woods in Randers County[42] were in 1805 described as commons in the sense that the trees and the pasture were possessed by different people. Only in 6 cases, however, did the common ownership concern the overwood. This kind of commonage was most lucidly reflected in Torup Buske and Druedal in which 'some own the land and everybody shares the trees'.[43] Correspondingly, Gregers Begtrup wrote that 'there are rare woods in which both wood, pasture and ground is common, e.g. Hobro Krat; likewise we have examples that one owns the overwood, another the underwood and a third party the pasture. This, however, is exceptional. On the other hand it is rather usual that the peasants hold a right to graze in the lord's forest, not only according to ancient custom but sometimes in agreement with their letter of tenancy'.[44]

Hence, the vertical common often consisted in the combination of seigneurial forest ownership and tenant pastoral rights. As suggested by Begtrup, it was, however, not always evident what these rights were founded upon. The report about Klemstrup Skovskifter (Marie Magdalene Parish) notes that 'Pindstrup village, wherein count Scheel is the larger proprietor, has claimed common pasture in the wood but their authority to do so is unknown'.[45] In another example, tax payment is regarded as sufficient authority. Hagsholm's tenants in Lerbjerg (Lerbjerg parish) professedly possessed the pasture in the village wood because 'they have had it in this way in the days of the former owner and they have paid taxes of the *skovskyld* which is 6 *skæpper hartkorn*'.[46]

On his travels in 1810, Wilhelm Warnstedt called upon 17 estates in Randers County. As usual, most of his comments concerned conservation and silviculture.

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42. Consisting of Onsild, Gjerlev, Nørhald, Rougsø, Galten, Støvring, Sønderhald, Øster Lisbjerg, Mols, Djurs Sønder and Djurs Nørre districts.
43. Rigsarkivet, Rentekammeret 3322.413: 'nogle ejer grunden og alle fælles om træerne'.
44. G. Begtrup 1812, p. 93: 'der gives enkelte skove, hvor både skov, græsning og grunden er i fællesskab, således Hobro Krat; ligeledes gives eksempel på, at en ejer overskoven, en anden underskoven og tredje mand græsningen. Men sligt er dog sjældent. Derimod er det temmelig almindeligt, at bønderne har græsningsret i proprietærens skov, ej alene efter gammel skik, men undertiden efter deres fæstebrev'.
45. Rigsarkivet, Rentekammeret 3322.413: 'Pindstrup by, hvori grev Scheel er største lodsejer, har tilholdt sig fællesgræsning i skoven, men deres hjemmel derfor kendes ikke'.
46. Rigsarkivet, Rentekammeret 3322.413: 'de har haft det således i forrige besidders tid og at de har svaret skatterne af skovskylden som er 6 skp htk'.

But we are also informed that in 427 hectares of wood called Ålsrode Skov and belonging to Katholm estate, grazing was used jointly by the tenants. And in Vosnæsgård, the choice of grazing compensation areas appeared to have been based upon anything but silvicultural considerations. A considerable part of Nyhaveskov was chosen instead of Vosnæshoved, Byllemose or Hiedskær, for example.

In Høgholm, Warnstedt met an example of the potential for speculation incorporated in the enclosure articles of the Forest Conservation Act. Hestehaven (110 hectares) was initially conserved, but, as the estate was sold, the new owner started an enclosure procedure as if it was not. Consequently, one third of the conserved wood was cleared as grazing compensation.

In 1830 16.4 % of the woods in Randers County were subject to common rights but only in six cases were they among overwood owners. Still, this was the second highest frequency (3.7%) after Ålborg. From Vinterslev Skov (Galten parish) we learn that allotment did not in itself guarantee the abolition of common rights, for even though it was partitioned into woodlots, 'several men own some lots in common, partly so that one owns the land and another the trees'.

In 1805 nearly two thirds of the woods of Århus County[47] were subject to common rights. The most frequent kind was the kind found in Lemming Vesterskov (Lemming parish). Here the only existing common rights was that 'the proprietor has the property and use rights concerning the trees and Lemming village has the grazing rights; this is founded upon ancient custom'.[48]

Battrup Skov (Tiset parish) presents an example of more elaborate kinds of common rights. It was divided among four freeholders in Battrup in such a way that the first had one woodlot and coppice in six locations, the second had one underwood lot and further coppice in six other locations, the third had just one underwood lot and, finally, the fourth had an individual grove. In addition to this division, one farmer held the grazing rights in the parcels belonging to both 1) and 2) whereas another possessed the pasture of 4).

In 1810 Wilhelm Warnstedt inspected 10 of the largest estates in the County. Again, his report contains relatively little information about common rights. We are, however, informed that in Rathlousdal the holders of grazing rights were bought out with money in order to bring to a close decades of deforestation. And in Gersdorffslund, forest enclosure had not been carried out in the best way. The rather flawed Fensten Skov was designed for conservation whereas the far better Søby Skov was to be used as grazing recompense.

28.9 % of the woods in Århus County described in 1830 were subject to common

47. Consisting of Hids, Sabro, Framlev, Hads, Vester Lisbjerg, Hasle, Ning, Hjelmslev, Tyrsting, Gjern, Voer and Nim districts.

48. Rigsarkivet, Rentekammeret 33322: 'proprietæren har ejendoms- og brugsret af træerne og Lemming by af græsningsret; det grunder sig på skik og brug fra Arilds tid'.

rights, the great majority of which represented the customary overwood grazing relation. In just one location did more complex common rights seem to thrive. The property rights to Forlev *Kirkeskov* (i.e. Church Wood, Skannerup parish) was characterised as *condominium* and we are told that accordingly 'enclosure has not taken place'.[49]

Among the more traditional common woods we find the copse Spørring Vesterskov (Spørring parish) where 'the land belongs to three men while the bushes are shared among twenty-one different […] no enclosure has taken place, but the bushes that used to be a common right for the whole village have been divided among the inhabitants'.[50] In other words, the allotment of the dominant underwood was a comparatively new arrangement. The report from Tåning (Tåning parish) reflects the procedure of allotment of woods according to farm holding rather than owner. What took place here was described as 'mutual common rights among the owners so that no one owns the wood on his own land but in contrast holds his part of the wood on another man's land, since every man has obtained his wood according to the value of the trees and not to the location of the lots'.[51]

In Vejle County[52], 40.3 % of all woods were by 1805 used in some sort of vertical commonage, where 'some own the wood and others own the land and the pasture'.[53] Of the eighteen freeholders who owned the wood in Engslet Skov (Smidstrup Parish) we are further informed that 'here, there exist only rights to the overwood and everybody has their parts – according to an ancient division – in each others parcels'.[54] So the physical division of land and trees respectively appears not to be identical.

In five woods the overwood was shared among more owners. From Egtved Skov (Egtved parish), the reports vividly illustrate how very complex the ownership structure could be. 'Common rights come about in such a way that some have meadow, land and trees; some just meadow; some land and trees; some just trees. Some disagree whether they own both trees and land.[…] It is not known for cer-

49. Rigsarkivet, Rentekammeret 3322.420: 'sameie'; 'udskiftning er ej sket'.
50. Rigsarkivet, Rentekammeret 3322.420: 'grunden tilhører 3 mand, mens buskene er delt mellem 21 forskellige […] ingen udskiftning har fundet sted, men buskene, der var en fælles rettighed for hele byen, er af beboerne indbyrddes delt'.
51. Rigsarkivet, Rentekammeret 3322.420: 'indbyrdes fællesskab mellem ejerne, så at ingen eje skoven på sin grund men derimod har skovpart på en andens grund, da enhver er tildelt sin skov efter træernes værdi og ikke efter jordloddernes beliggenhed'.
52. Consisting of Bjerre, Hatting, Nørvang, Tørrild, Jerlev, Brusk, Elbo and Holmans districts.
53. Rigsarkivet, Rentekammeret 3322.424.
54. Rigsarkivet, Rentekammeret 3322.424: 'nogle ejer skoven og andre ejer grunden og græsningen'; her aves kun rettighed til overskoven, og enhver har sine skifter efter gammel indeling I hverandres lodder'.

tain upon what these rights are founded but they probably originate from time immemorial'.[55]

Wilhelm Warnstedt inspected the forests of twenty-one estates and major assemblages of peasant woods in 1810. Several of the latter were allotted among the freehold peasants, but wooden stakes most frequently marked the individual lots. In Øster Starup Skov, however, the woodlots were all fenced, and the chief forest officer remarks that 'even though pasture takes place in these areas, the value of this – albeit not perfect – precaution can be recognised'.[56]

In 18.4 % of Vejle County's woods, common rights between overwood owners and holders of grazing rights persisted in 1830. And three woods appear to have been subject to shared overwood ownership. Lilballe Skov (Eltang parish) was enclosed in 1829 but simultaneously the report rather unexpectedly refers to 'common rights among the co-proprietors'.[57] These rights might pertain to the pasture only. And the information about Jerlev Skov, which was owned by 14 farmers but 'is still in common' is equally ambiguous.[58]

More transparent documentation for common overwood rights relate to the two diminutive groves Skidengren and Espenkær in Daugård parish. Here 'there is full commonage; of that which is cut everybody receives one fourth and they likewise have cattle grazing'.[59]

In 1805 nearly one third of the woods of Ringkøbing County[60] were affected by common rights – two of these by joint proprietorship to the overwood. They were Rustrup Skov and Landal Skov, of which we are told that 'some of the wood is in common and for the rest they own wood in each other's grass-lots'.[61] From 1830 there are only reports of ten woods, all of which were by then fully enclosed.

Ribe County[62] also belonged to the less wooded tracts of western Denmark. By 1805 one third of its woods was managed by common rights. In just one of them, however, the overwood was shared between several owners. This was Egholt Skov

55. Rigsarkivet, Rentekammeret 3322.424: 'Fællesskab finder således sted, at nogle har eng, grund og træer. Nogle har eng alene. Nogle grund og træer. Nogle træer alene. Nogle er uenige om, om de både ejer træer og grund […] Bestemt vides ej hvorpå rettigheden grunder sig, men det er nok fra Arilds tid'.
56. Rigsarkivet, Rentekammeret 333.11: 'og omendskønt der ligeledes græsses på disse steder, lader sig værdien af denne om just ikke fuldkomne forholdsregel dog tilkende'.
57. Rigsarkivet, Rentekammeret3322.428: 'fællesskab mellem samejerne'.
58. Rigsarkivet, Rentekammeret3322.428: 'ligger I fællesskab endnu'.
59. Rigsarkivet, Rentekammeret3322.428: 'fuld fællesskab finder sted – af det som hugges får hver $^1/_2$ part og de har iligemåde kreaturer på græs'.
60. Consisting of Vrads, Hind, Hammerum, Nørre Horne, Bølling, Hjerm, Ulfborg, Ginding, Vandfuld and Skodborg districts.
61. Rigsarkivet, Rentekammeret 3322.429: 'af skoven er noget i fællesskab, for resten ejer de skov på hverandres græslodder'.
62. Consisting of Andst, Malt, Gørding, Øster Horne, Vester Horne, Skast and Slavs districts.

(Lejrskov parish) in which 'everything lies in common'.[63] In Skanderup (Skanderup parish) one might rather interpret the description as reflecting a vertical commonage between overwood owners and holders of grazing rights. It says that 'some own the wood on the land of others, since the land was enclosed approximately thirty years ago whereas everyone kept his wood as beforehand'.[64]

Rather surprisingly, the only horizontal overwood commonage still left in 1830 was found in Skanderup Skov where de Hofman had conducted enclosure fifty years earlier (p. 276). Still, the description is conclusive: 'the land was enclosed many years ago but the overwood is still common'.[65]

63. Rigsarkivet, Rentekammeret 3322.430: 'ligger altsammen under fællesskab'.
64. Rigsarkivet, Rentekammeret 3322.430: 'nogle ejer skoven på andres grund, da grunden r udskiftet for omtrent 30 år siden, men enhver beholdt sin skov ligesom forhen'.
65. Rigsarkivet, Rentekammeret 3322.430: 'Jordbunden for mange år siden udskiftet, men overkoven endnu under fællesskab'.

Chapter 20

Forest conservation and sustainability

'Conservation is the best forester'

Four decades after the issue of the Forest Conservation Act, it was still necessary to warn against the detrimental effects of forest pasture. But in his description of Århus County Theodor Hasle concluded that 'the first contingency for propagation and improvement of forests is peace from cattle; and fortunately the ruinous abuse in spring or autumn of letting one's herd out in the woods or considering them a temporary expedient in a dry summer has ceased for us'.[1] Nevertheless, in some places temporary and even lasting conservation of forests against browsing and grazing animals was initiated long before 1805. And in others grazing was restricted to those times of the year in which the damage was the slightest. In 1785 the majority of the forests belonging to Rosenlund estate were only grazed during the autumn.[2] And the same applied to Rathlousdal estate.[3]

Svenstrup on Zealand was one of the estates in which early forest enclosure was followed by conservation.[4] In 1792-93, the surveyor, Carsten Ehlers, enclosed its adjacent lands. Dense forests were generally fenced and subsequently conserved. Areas with minor groves and scattered trees were used for pasture 'moreover to conserve the wood in such stretches for as long as possible and not to be compelled to remove these trees as long as they were growing well'.[5] The estate had approximately 1440 hectares of wood, of which only 133 belonged to the latter kind. So the owner thought that his reforms did 'more for the conservation of the woods' than the Forest Conservation Act of 1805.

The case of Svenstrup was not unparalleled. Many *enemærke* woods belonging to larger estates were already conserved in 1785 but, in the first place, they need not

1. T. Hasle 1844, p. 178: 'Den første Betingelse for en Skovs Vedligeholdelse og Forbedring er Fred for Kreaturer; og det fordærvelige Misbrug, om Foraar eller Efteraar at jage sin Besætning ud i Skovene eller at betragte dem for en Nødhjælp i en tør Sommer, er heldigviis forbi hos os'.
2. Rigsarkivet, Rentekammeret 2485.10 (1785).
3. Rigsarkivet, Rentekammeret 2485.18 (1785).
4. F. Heide 1921, pp. 39 ff.

necessarily have been fenced as thoroughly as stipulated in 1805, in the second, conservation was not necessarily intended to be permanent. In 1806 it was reported of Indelukket belonging to Ledreborg Estate that it 'has been conserved in the old days so that it is currently a closed stand, and the fence was consequently obliterated about twenty years ago'.[6]

The intended future of the fence is normally impossible to establish from the wording of reports. Juulskov's woods in Refsvindinge were conserved so that no animals 'were allowed except for during the winter's night or in the late autumn'.[7] And finally, the intention of conservation was not always silvicultural. Three quarters of the woods belonging to the villages Bølling and Fuglsang in southern Jutland were conserved in 1805 for the sake of haymaking.[8]

According to the 1785 reports to the *Rentekammer*, numerous conserved forests already existed by that date.[9] To mention some examples: in Marienborg on Møn 199 hectares were conserved; the entailed estate Hardenberg on Lolland could similarly boast more than 200 hectares of *fredskov*; Sorø Academy had 65 hectares, Kristianssæde 110, Glorup 95 and Berritsgård 110-165. In Jægerspris, the private property of the heir presumptive to the throne, 33 hectares were conserved as early as in 1754.[10] And naturally this applied to those copses where wood production was of primary importance. Similarly the farm-based underwood parcels in Hundslev (Kølstrup parish), Urup (Rynkeby parish) and Birkende (Birkende parish) – all on Funen – were fenced and conserved. *Fredskoven* (i.e. the conserved wood) even appears regularly as a proper name during the eighteenth century.

In Vilstrupgård on the very northern fringe of Schleswig, C. D. F. Reventlow in 1796 witnessed the system of temporal conservation.[11] Here the seigneurial forest was partitioned into a number of parcels among the tenants. But, as they possessed no other pasture, a piece of woodland had to be designated as pasture every time another piece was conserved.

However, forest conservation was not equally likely to succeed everywhere. In 1785 the owner of Bøgsted Skov (Astrup parish) in Jutland totally desisted from

5. F. Heide 1921, p. 41, quoting a memorandum 11.5.1808: 'for endogsaa at Conservere Skoven paa disse Strækninger saa længe som mueligt og ikke at være forpligtet til at borttage disse Træer, saa længe de stod i god Vækst […] sket mere til Skovens Conservation'.
6. Rigsarkivet, Rentekammeret 3322.382 (1806): 'har været indfredet i de ældre tider, så den nu står med tæt skov, derfor er hegnet for en snes år siden kasseret'.
7. Rigsarkivet, Rentekammeret 2485.12: 'ikke tillades nogen kreaturer uden under vinter-natten eller ud på efteråret'.
8. Rigsarkivet, Rentekammeret 3322.424 (1805).
9. Rigsarkivet, Rentekammeret 2485.6-19.
10. See also P. C. Nielsen 1974B.
11. Reisebemerkungen, p. 41.

attempts at fencing and conservation 'for I know nothing in this region which can withstand the greed of the cattle and wicked people's way of thinking'.[12]

In 1803 Gregers Begtrup reports about major forest conservation in Petersgård and Vintersbølle in Zealand, in Knuthenborg on Lolland and on the estate that comprised most of the island of Langeland and consequently bore its name.[13] And he concludes that approximately 80% of the total woodland acreage of Zealand was already conserved and that 'in order that the forest enclosure should be of continuing advantage, the woods have been conserved with stone walls or earth banks with hedges. In the open spaces there are sown tree seeds which grow well, since conservation is the best forester'.[14] Valbygård in Sorø County conserved its part (33 hectares) of Søndre Overdrev together with 110 hectares of Vedsø Vang for silvicultural purposes. And by 1803, Giesegård had already conserved more than half of its 1100 hectares of woodland.[15]

From the 1805-6-reports we have an abundant material to be able to analyse the advent of conservation before legislation on a national scale. The relative number of conserved woods per district is presented in fig. 40.[16] 1178 or approximately one third of all woods were protected against grazing livestock when the Act was issued in 1805. The conservation effort had clearly advanced most in eastern Denmark. Here about half of all forests were conserved whereas the corresponding level in Jutland was significantly lower. In Ålborg County only one out ten woods was properly conserved.

Conserved forests were significantly larger than the ones still used for pasture in 1805. Of the woods for which the acreage is reported, the average size of those conserved was 27.5 hectares (Σ=1277), while for the pasture-woods it was 20.8 (Σ=1980). So major estate *enemærke* woods evidently constituted a significant part of the pre-1805 *fredskove*. But they were not totally dominant. A significant number of peasant copses were also exempt from pasture, and in 1806 it was reported from parts of Funen where such woods prevailed that 'nobody plants, but they all conserve'.[17]

Evidently the Forest Conservation Act of 1805 did make a difference. By 1830 forest conservation was predominant in large parts of the country. On a nation-wide scale, approximately two out of three woods were conserved against grazing live-

12. Rigsarkivet, Rentekammeret 2485.14: 'thi eg ej af noget her i egnen, som kan imodstå kreaturernes grådighed og slette folks tænkemåde'.
13. G. Begtrup 1803, p. 338; *idem* 1806, pp. 598 f, 751.
14. G. Begtrup 1803, p. 315, 318: 'På det at denne skovenes udskiftning af fællesskabet kunne blive til varig nytte, ere skovene blevne indfredede med stengærder eller jordvolde med plantning. De åbne pladser tilsås med skovfrø, som har god fremvækst, da fred er den bedste forstmand'.
15. G. Begtrup 1803, p. 336.
16. The number is computed as relative only to the number of woods for which such data are known.
17. G. Begtrup 1806, p. 301: 'ingen planter, men de frede alle'.

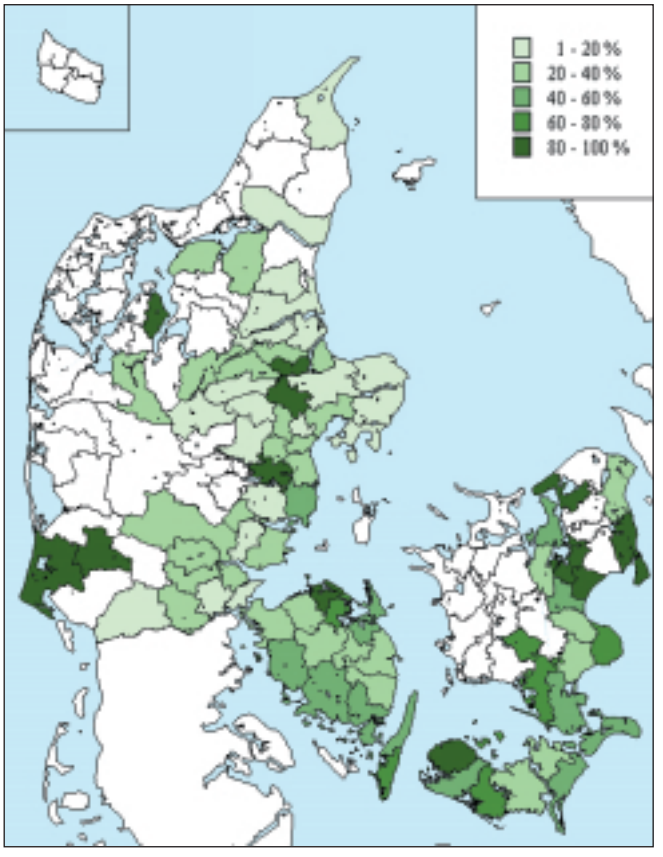

Fig. 40: *The relative prevalence (number of woods) of woodland conservation per district in 1805. The high values in south-western Jutland are due to the very low number of woods recorded.*

stock by means of 'durable fences'. And in contrast to the voluntary conservation programmes implemented locally during the late eighteenth century, the conservation imposed by legislation and maintained through state control was permanent. So almost every wood then assigned as *fredskov* still exists.

In terms of geography, the advance of conservation was most prominent in eastern Denmark (fig. 41). In all counties east of the Little Belt sound at least half of the woods reported on were conserved. In Jutland, the situation was somewhat more complicated. Here the estate forests in particular appear to be conserved, whereas grazing continued in numerous minor peasant woods.

Fence and form

On the issue of forest conservation the post-1805 county reports are often vague. The nuclear concept *fred* (peace/conservation) might, therefore, in some instances refer to the existence of a forest fence and the exclusion of former holders of grazing

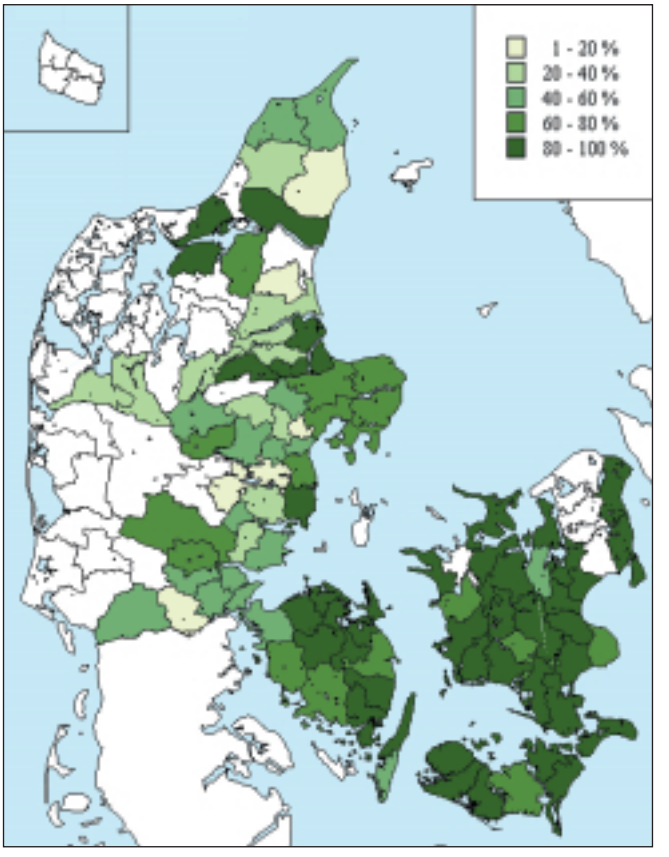

Fig. 41: The relative prevalence (number of woods) of woodland conservation per district 1830.

rights but not necessarily to the total abolition of wood pasture. And as mentioned, the term 'conserved' gives no guarantee of continuance. Still it is clear that the conserved forests almost always were fenced.

Since conserved forests imposed by the act were to remain in this state forever, the signification of the term 'conserve' was naturally of great juridical significance.[18] During the first half-century after its issue, several jurisprudents contributed to its comprehension. According to Christian Rothe the concept *fredskov* included areas already fenced and conserved as well as areas fenced and conserved in accordance with the 1805 act. The defining ingredients remained fences and the absence of forest pasture.

The Forest Conservation Act bases its clause regarding woodland fences (§15) on the more elaborate provisions in older legislation. Already the *overdrev* enclosure ordinance for Jutland of 1760 accentuated stone walls as the preferable sort of forest fence: 'As far as the fence is concerned, it should consist of stone walls for choice

18. A. Oppermann 1929, pp. 109 f.

wherever stones are to be found or easily collected, otherwise – for want of wickers – of durable ditches or earth walls […], which according to circumstances are planted and preserved with hedgerows consisting of hawthorn, juniper, elm, hornbeam, willow, elder, hazel or the like'.[19] And according to the Enclosure Act of 1781 (§10, 12, 13 and 18) the burden of establishment and maintenance of fences should, in general, be shared equally by neighbours. Yet it gave freedom of choice regarding the type of fencing and mentioned ditches and earth banks with wattle fence. But 'the king will look upon the construction of stone walls or planting of hedges wherever possible with the greatest satisfaction'.[20] So in 1790 the bailiff on Fuirendal estate on Zealand wanted to plant hedges on the top of the earth walls along those ditches that hitherto had been the only and insufficient forest fence.[21] The Ordinance on fences from 1794 lists a number of 'legal fences' (*lovlige hegn*).[22] Of particular interest as forest fences are stone walls, turf walls, picket fences and various ditches.

According to those 1805 reports in which the types of fencing employed around conserved woods are described, earth banks and stone walls predominated. But combinations of these and other types were frequent. In Skjoldemose (Funen), the woods were surrounded by stone walls, ditches, hoardings constructed of oak and beech timber and, finally, hedges made of sweetbriar (*Rosa rubiginosa* L.).[23] Egeskov on Funen was even fenced with a wall of seaweed.[24]

The ditches are often described as 'double' indicating the existence of a ditch on both sides of the earth wall, and the customary 'dead fences' consisting of wickers were also common. They could either be formed as so-called *vasegærder*, i.e. two parallel lines of vertical poles with compressed, horizontal branches between them or they could be *vindegærder* made by wattle between poles in one line. Both forms of fencing were made and renewed from material cut down from willow or poplar trees planted on or along the earth bank.

The sudden demand for plant material apparently exceeded domestic supplies. In

19. Forordning angaaende ...Jylland … 1760: 'Hvad Indheigningen i sig selv angaaer, maatte samme helst skee med Steen-Gierder hvor Steen der findes eller beqvemmelig kand samles, men ellers, og i Mangel af Giersel, med varagtige Grøfter eller Diger, hvilke […] efter Omstændighederne plantes og opfredes med levende Gierder af Torn, Enebær-Træe, Alm, Afn.Bøg, Piil, Hyld, Hassel eller andet deslige'.
20. Chronologisk Register 8, p. 93: 'og vil Kongen derhos i Særdeleshed med Velbehag ansee, at Steengierder blive satte, hvor dertil findes Leilighed og levende Gierder plantede, hvor Grunden dertil er beqvem'.
21. Storlandbrug under omformning, pp. 159 f.
22. Chronologisk Register XI, pp. 198-237.
23. G. Begtrup 1806, pp. 467 ff.
24. Rigsarkivet, Rentekammeret 333.71.(1806); for the use of seaweed for fencing, see J. Laursen 1990.
25. Rentekammeret 2485.68.

1780, when the forest separation in northern Zealand had just commenced, the governor notified the *Rentekammer* that shortage of young hedgerow plants could be expected.[25] Before the enclosure the annual consumption amounted to 8-10,000 individual plants of alder, hazel or hawthorn. But, since the demand would inevitably increase, he suggested that the peasantry be encouraged to grow such plants in their own gardens.

It was, however, not entirely impracticable to conserve woods without fences. In the royal forests of Jutland, numerous instances of prosperous rejuvenation had been carried out without them,[26] and, according to the plans of (early) reforms on Hørsholm on northern Zealand in the 1750's, part of a shepherd's role was to make fences redundant.[27]

In order to improve the prospects for silviculture, the enclosed woods were to be as little exposed as possible to the wind-swept open landscape surrounding them. In order to reduce both the edge of the wood and the cost of fencing, the surveyors who executed the enclosure made an effort to create condensed woods employing as many straight borderlines as possible. The result was an entirely new 'orchestration' of woodland appearance in the cultural landscape.

As long as field woods prevailed in large parts of the country, it was virtually impossible to determine a forest boundary, as reflected in the customary definition applied by the Forest Conservation Act: as far as roots and branches reach. Consequently pre-enclosure forest acreage measures normally make little sense. After the reforms, the grazing compensation granted to the peasants was normally cleared within a short period of time, so the enclosed wood emerged as an island in the still more open landscape surrounding it. Its new status as the inaccessible property of the local manor had simply become visible. Sharp edges and effective stone walls might have had other purposes, but they contributed positively to the impression of 'private property'.

Partial conservation and continued forest pasture

Article 7 in the Forest Conservation Act addresses woods where the ground would be covered with heather if they were cleared. A kind of rotational forest conservation was allowed here in order to avoid an unrestrained heathland expansion. The article appears to have been applied in a few cases as, for instance, in the forest around Silkeborg in central Jutland.[28] Østerskov constituted the fifth portion that was con-

26. B. Fritzbøger 1990C.
27. Den stolbergske plan, p. 326.
28. Rigsarkivet, Rentekammeret 333.11.

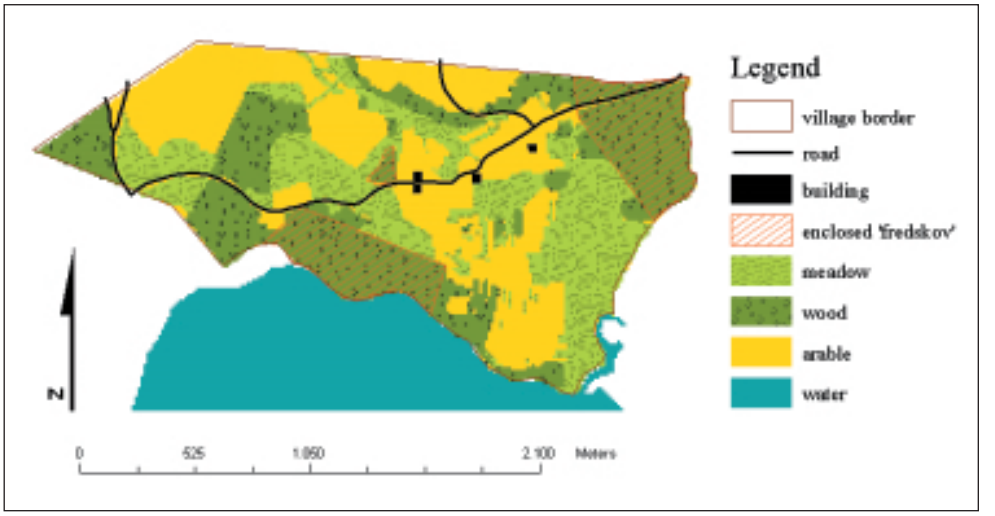

Fig. 42: *Instance of a rectilinear landscape brought about by forest enclosure. The woods belonging to the hamlet Suserup on southern Zealand respectively before and after (hatched) enclosure. Based upon B. Fritzbøger & J. Emborg 1996.*

served against cattle grazing, and the four parcels to be conserved subsequently were two halves of Sønderskov and two halves of Vesterskov.

The prohibition against woodland pasture did not follow automatically from enclosure. In those parts of southern Jutland, where peasant woods were first enclosed, grazing continued. In 1808 Gregers Begtrup noted that 'there are parts between Vejle, Kolding and Fredericia which have such fertile woods that they are hardly found better anywhere, even though they are conserved in no other way than by sparing them from the bite of animals in the early summer'.[29]

The ban was, however, a cornerstone in the 1805 legislation even though it did embrace a number of exceptions. Marginal woodland areas employed as grazing remuneration, game parks as well as scattered groves were exempt, as was pannage of swine and pasture of tethered cattle in clearly demarcated woodland meadows. Furthermore, the act did not relate to those remaining crown woods that were managed according to the 1781 ordinance. So, during the first half of the nineteenth century, forest pasture was not altogether obsolete.

When the holders of customary grazing rights received compensation through woodland enclosure, their new lots could, of course, consist of wood, and, if that were the case, wood pasture could continue. It appears, though, that such 'compensation areas' were normally cleared within a short span of years after enclosure. If

29. G. Begtrup 1808, p. 276: 'Der gives Partier mellem Veile, Colding og Fridericia, som have en saa overordentlig frodig Skovvæxt, at man næppe vil finde den nogensteds bedre, og Skoven gives dog ingen videre Fred, end man skaaner den i Forsommeren for Kreaturernes Bid'.

the forest owner possessed the trees, he would obviously fell them. And if they went with the land, there could be a number of reasons to remove the wood: it could provide cash, it could improve the quality of the pasture and finally it could make way for an extension of the cultivated area.

In general, continued forest pasture took place in minor woods. In 1806 the *Rentekammer* licensed Vedbygård manor to use 37 hectares of forest for pasture.[30] But some estates appear to have disregarded the requirement to conserve. In 1810 the forests of Boller and Møgelkær were all grazed since 'it is still considered as a claim'.[31] Where Warnstedt met lasting forest pasture on his journey of inspection in 1810, its legal foundation was not always clear. On the estate Tjele in central Jutland, he writes that 'notwithstanding that the assertion of the bailiff accords with what has been reported to me, that forest pasture for the tenants of Tjele is only a particular privilege for individuals, the forest rangers characterise it as an established easement'.[32]

In 1830 approximately one third of all woods were not explicitly described as *fredskov*. So, even though the Forest Conservation Act was in general successful, forest pasture continued. From Svendborg County we hear that most of the woods were fenced, 'but livestock nevertheless graze many of them'.[33] Finally, several royal chief forest officers appear to have authorised grazing in their districts partly as an allowance for the forest officials and partly as a means to keep the forest floor free of weeds.[34]

One kind of livestock grazing was exempt from the general prohibition, namely the feeding of swine on acorns and beech mast during the autumn months. Since this kind of animal husbandry was for this reason not mentioned in the annual reports, it is impossible to estimate the extent of pannage during the nineteenth century. Still, in some estates it surely continued until World War I;[35] on others it was abolished together with cattle grazing.[36]

30. Rigsarkivet, Rentekammeret 3322.251, no. 178.
31. Rigsarkivet, Rentekammeret 3322.324: 'endnu stedse ansees som en Beföielse'.
32. Rigsarkivet, Rentekammeret 3322.324: 'Omendskiönt Forvalterens Udsigende stemmer overeend med den mig meddelte Beretning deri, at Skovgræsning for Thieles Bönder kun var speciel Begunstigelse for enkelte, saa vilde dog Forstbetientene udgive samme for bestaaende Servitut'.
33. C. Dalgas 1837, p. 342: 'men kreaturer græsser dog mange af dem'.
34. A. Oppermann 1923; L. Bruun 1996.
35. H. Kloster 1984, pp. 79 ff.
36. Store Møsten 1816: Rigsarkivet, Rentekammeret 3322.389.

Hunting rights in the light of reforms

As hunting rights formed a notable ingredient in landed property, they were fundamentally influenced by the land reforms. By the beginning of the period, feudal rights still prevailed. So when crown lands were sold to non-noble buyers, the crown normally retained the hunting rights in order to lease them to local peers.[37] But the social inequality of hunting rights was soon to be amended.

Common rights to game were naturally abolished in accordance with the enclosure of those lands upon which it lived. And through the Enclosure Act of 1781, the social limits of hunting rights were extended.[38] By the beginning of the nineteenth century, there existed four different categories of possessors of hunting rights:[39] 1) entailed estates, 2) other complete estates, 3) incomplete estates and 4) enclosed peasant farms. And in 1840 a new Hunting Law stipulated that the right to hunt followed land ownership.[40]

As before the reforms, hunting was naturally not restricted to the forests. But as forest conservation advanced, the conditions for wildlife inside enclosed and fenced woods improved considerably. The competition for forage from the forest floor diminished. And throughout the nineteenth century hunting was a prominent by-product of forestry. The combination of silviculture and preservation of game was, nevertheless, not wholly uncomplicated. Trained chief forest officers employed by noble landlords to propagate the forest were often frustrated by the uneconomical dual considerations of the conflicting economic interests of game and trees.[41]

The Danish court experienced a notable assimilation of bourgeois culture during the last decades of the eighteenth century. The crown prince (later Frederik VI) was raised in accordance with the principles of Jean-Jacques Rousseau and the extensive representative court life of early absolutism was replaced by a more private style. In this process, the significance of the ceremonial royal hunts naturally vanished. So in the remaining royal forests emphasis was placed almost exclusively upon silviculture.

In 1771 all royal hunting rights outside northern Zealand were leased out in order 'to exterminate wildlife'.[42] And eighteen years later, all large game in that region was shot as well.[43] Only the park Jægersborg Dyrehave kept its stock of red and fallow deer, and the Royal *Rentekammer* explicitly considered hunting as 'a pastime with no

37. C. Weismann 1931, p. 240.
38. C. Weismann 1931, p. 319.
39. J. Mandix 1813, pp. 360 ff.
40. C. Weismann 1931, p. 370.
41. J. Laursen 1999.
42. C. Weismann 1931, p. 240: 'zur Ausrottung des Wildes'.
43. C. Weismann 1931, p. 307.

great value'.[44] In 1777, the 'English Hunt' with its hundreds of hounds, horses and gamekeepers was abolished, and the following year the royal management of hunting and forestry were separated.

As the traditional royal hunting prerogative faded, game-keeping and hunting developed into a notable ingredient in the social life of many major estates; in the words of H. W. Eckardt it served as a 'retreat from reality' for a waning aristocratic culture.[45] By the end of the nineteenth century, a few of them had even established their own fenced hunting grounds. The most extensive and eccentric belonged to Frijsenborg in Jutland, where approximately 40 kilometres of fence was raised in about 1890.[46] But this was clearly an exception.

By the beginning of the century, however, the hunting interests among noble landlords were being expressed through the establishment of numerous parks (*dyrehaver*). They were explicitly exempt from the general conservation clauses, so here forest pasture continued. According to Gregers Begtrup, Zealand had six private parks in 1803.[47] They all belonged to major estates, namely Lerchenborg, Adelersborg (Dragsholm), Store Frederikslund, Ryegård and Svenstrup. But there were more.

In the 1805-30 reports 82 are mentioned; 26 were located on Zealand, 29 on Funen, 11 on Lolland-Falster and 16 in Jutland. They all served as estate *enemærker*. Some might, however, have been parks only in name not in function. In contrast to most other woods, parks were usually surrounded by rails. And due to their primarily recreational functions, they were normally located near the manor.

44. C. Weismann 1931, p. 324: 'en Adspredelse uden større Værdi'.
45. H. W. Eckardt 1976, p. 274.
46. J. Laursen 1999.
47. G. Begtrup 1803, p. 362.

Chapter 21
A silvicultural revolution

Silvicultural experiments 1730-76

The silvicultural revolution of the late eighteenth and early nineteenth century has been described on several occasions.[1] But since it was closely related to the process of property transformation, this connection calls for a closer examination.

Until a few decades ago, the large-scale experiments in the crown woods during the 1760's and 70's were considered as the very first phase of efficient silviculture in Denmark.[2] This view was, however, notably revised by investigations carried out by Viggo Petersen during the late 1960's.[3] He was able to establish that comprehensive efforts to sow, plant and conserve forest trees took place during the entire first half of the eighteenth century – a result that was later elaborated through local studies.[4]

After a series of totally discouraging efforts to plant forest trees during the early 1720's, royal forest officials adapted a new silvicultural strategy during the following decade. In compliance with the 1733 ordinance, numerous plots dominated by vigorous re-growth were fenced with earth-walls and ditches, and remarkably good results were achieved. Of a total of 116 such conservation projects in Koldinghus County carried out in 1710-60, 66 were later given up because the trees had reached such a height that the cattle was unable to harm them.[5] In some of these pens, natural re-growth was further supplemented by sowing.[6] However, whenever royal forest rangers enclosed a part of the forest floor, peasants holding grazing rights were entitled to receive compensation, and this probably restricted the advance of silviculture.

But as the cattle plague swept through the country in the 1740's, the need for pasture diminished. As a result, considerable space was left to be used for silviculture, and in 1747, when a new *overjægermester* was appointed after some years during which the post was vacant, all forest rangers were instructed to select places fit for

1. E.g. A. Oppermann 1887-89; E. Laumann Jørgensen & P. C. Nielsen 1964; V. Petersen 1969; B. Fritzbøger 1998.
2. E. Laumann Jørgensen & P. C. Nielsen 1964, p. 11.
3. Based upon V. Petersen 1966.
4. B. Fritzbøger 1989C, 1990A and 1990C.
5. B. Fritzbøger 1990C.
6. E.g. G. Begtrup 1806, pp. 737 f.

Fig. 43: *The geometrical figures of von Langen's management expressed a systematic re-arrangement of the forest landscape, which was related to that of the later rectilinear woodland fences. Map from the 1760's showing Nørreskoven. Rigsarkivet.*

the propagation of trees.[7] During the following decades a notable effort to rejuvenate forests was sustained in the crown woods. 1740-59 no less than 151 enclosed pens were established all over the country, [8] including in private forests.[9] And some years later, some of these conserved wood parcels were even scheduled to be thinned.[10]

The Brunswick forester, Johan Georg von Langen, – to posterity a kind of 'legendary hero among foresters'[11] – was undoubtedly the key figure in the re-shaping of forest management in Denmark as he supervised the reformation of the royal forest of northern Zealand 1763-76. Still, his ideas may have reached Denmark

7. Rigsarkivet, Rentekammeret 331.1-5 (25.4.1747).
8. V. Petersen 1969, p. 263.
9. C. Weismann 1900, pp. 19 ff.
10. C. Lorenzen 1944.
11. A. Oppermann 1887-89, p. 29: 'en Slags forstlig Sagnhelt'.

before he did so in person.[12] Around 1760 the landlord Theodor Lente-Adeler on Funen proposed that a forest should be divided 'proportionate to its extent, and where it is convenient in certain years clear-cut the parcels one after the other'.[13] And forest allotment as a basis for rotational tree-felling and rejuvenation of forest parcels was the core idea of the German high forest management system introduced by von Langen, first in Norway (1737-44) and later in Denmark.[14]

Altogether, the reforms named after the royal *overjægermester* Carl Christian von Gram and von Langen resulted in a stupendous corpus of management plans reaching more than a century into the future. And during the thirteen-year period in which the initial phase of the plans was carried out, approximately 1000 hectares of forest were rejuvenated. In 1776 von Langen died and two years later the entire reform project was cancelled for financial reasons. In 1804 an alternative management plan was issued for the remaining royal forests based upon the traditions from German high forest management even though parts of the administration clearly preferred the selection method.[15]

The making of a professional identity

The summoning of Johan Georg von Langen in 1737 and 1762 followed a wish to engage people with particular skills in forest management. In this way, his employment expressed a general tendency of the eighteenth century towards the shaping of forestry professionals.

As early as in the 1570's, Noë Meurer had emphasised the importance of letting only capable rangers supervise the forest. But as natural and cameral sciences progressed, this requirement became still more evident. Von Langen's most conspicuous lasting result then appears to have been the education of quite a few young chief forest officers who were later to have considerable impact upon both private and royal forest management.[16]

The importance of professional qualifications was emphasised by several contemporary writers. The pseudonymous Pelagus mentioned 'the very common conception that forest rangers can – just as deans and bell-ringers – perform their duty without using their head'.[17] And half a century later, the royal *overførster* Georg Wil-

12. P. Wagner 1992.
13. Cited from C. Weismann 1900, p. 12: 'à Proportion af dens Størrelse, og hvor Lejlighed falder paa visse Aaringer, og saa afhugge en Plet efter en anden rent af'.
14. T. Frygjordet 1968; E. Laumann Jørgensen & P. C. Nielsen 1964.
15. J. B. H. Pedersen 1947.
16. E. Laumann Jørgensen & P. C. Nielsen 1964, p. 108 ff; P. C. Nielsen 1986.
17. Anonymous 1757 B: 'den mesten almindelig blevne tanke, at en skov-betjenter kan, ligesom degne og klokkere, forvalte sin betjening uden hoved'.

helm Brüel lamented the prevalent misconception that woodland management could be entrusted to 'people who know of nothing except how to shoot a poor animal, catch a flight of partridges, exercise a shooting horse and wait at a table dressed in a green uniform'.[18]

The 1781 ordinance prescribed that only competent people should be appointed to the royal forestry department.[19] And three years later two official forestry academies were established. During the succeeding decades this ideal of professionalism made a still greater impact upon forest management in both private and royal woods.

Just as enclosure and fencing expressed the alienation of forestry in relation to the surrounding rural society, so did the definition of professional skills. This social separation, however, was a lengthy process. It commenced when in 1710 it was decreed that royal forest rangers should leave their village communities in order to live in their particular districts.[20] And it progressed during the century as still more forest officials came from abroad. With the forestry academy in Helsingør being abolished in 1791, the academy in Kiel in the duchy of Schleswig was until 1833 the only remaining one, with the result that a great many of the chief forest officers employed throughout the monarchy were, in fact, German-speaking.

The abolition of traditional peasant agro-forestry and the reformation of forestry as a specific profession were, therefore, considered to be a paramount precondition for the introduction of sustainable forest management systems, exactly as it had been to the French forest reforms of Jean Baptiste Colbert.[21] Some German sources even address the 'emancipation' of forestry (from agriculture, that is).[22] The physical and social segregation of forestry were two sides to the same question.

The dispersal of ideas and plants

Structural reforms consisting of the total abolition of common rights and forest pasture were considered as indispensable requirements for the foundation of 'rational' forest management. They were, however, not a sufficient precondition. What was equally necessary was the dispersal of both silvicultural ideas and the material means to permit their realisation. The spread of both theoretically and practically skilled chief forest officers was, of course, a long drawn-out process. But

18. G. W. Brüel 1802, p. 33: 'folk, som ej har andre kundskaber end at skyde et stakkels dyr, fange en flok agerhøns, dressere en skydehest og i en grøn kjole at opvarte ved et taffel'.
19. Chronologisk Register 8, p. 88.
20. Dansk skovbrug 1710-33, p. 31.
21. A. Corvol 1979.
22. I. Schäfer 1992, p. 53.

exactly as was the case with reformative ideas in general, numerous magazines and booklets facilitated a geographical broadcasting of new silvicultural theories.

During the early part of the eighteenth century, French silvicultural literature appears to have predominated among royal forest officials.[23] As late as in the 1790's, the royal *overførster* in Schleswig, F. F. von Krogh, relied heavily upon Duhamel du Monceau.[24] But since the middle of the century, German literature appears to have become still more prevalent. And in 1768 Heinrich Christian von Brocke's five-volume *Wahre Grunde des physikalischen und experimental allgemeinen Forst-Wissenschaft* was distributed to all royal forest districts as an official guidebook.[25]

Parallel to the appearance of economical magazines, a growing number of Danish articles concerned with forestry were issued after the 1750's. In 1779 Esaias Fleischer published the first monograph on the subject. Although it has been considered as exegetic in character rather than based upon domestic experience, it held a dominant position for decades.[26]

Knowledge was one precondition for the successful technological application and diffusion of new silvicultural systems based upon long-term planning and artificial rejuvenation. The access to plant and seed material was another. And in both respects, Danish chief forest officers were equally associated with a developing European network.

Since the 1780's, a number of official institutions focused upon the introduction and dissemination of exotic species.[27] And parallel to this increasing employment in particular of coniferous foreign forest trees in royal forest management, which was instigated by von Langen, a number of private plant outlets appeared. The principal ones, however, were located in the Duchies. On Als a nursery was already established during the first decades of the century and in 1786 a former royal gardener laid the foundation of one in Haderslev.[28] But around the turn of the century, Flottbecker Baumschule (Tree Nursery) near Kiel appears to have been dominant.[29]

Some similar institutions did, nevertheless, exist in the kingdom. In the 1750's one was founded on the outskirts of Copenhagen.[30] Later Peter Schellerup founded a tree nursery in Ålborg,[31] which during its first ten years of existence propagated more than 16,000 trees of the species ash, maple, beech, oak, chestnut, rowan, hazel,

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23. A. Oppermann 1887-89, p. 35.
24. Reisebemerkungen, pp. 61 ff.
25. A. Oppermann 1887-89, p. 35.
26. E. Fleischer 1779, p. XXXIV; A. Oppermann 1887-89, pp. 31 ff.
27. B. Fritzbøger 1995A and 1997A.
28. C. Syrach Larsen 1928, pp. 100 f; O. Olsen 1976, pp. 37 f.
29. It is described in e.g. C. Olufsen 1806.
30. A. Christensen 1981.
31. G. Begtrup 1810, pp. 325.

elder, laburnum and dog rose. In Ålborg plants were distributed for free, as they also were in a nursery established by the minister in Hjermind, Hans Bjerregaard.[32] In 1826-33 he distributed approximately 600,000 plants to local landowners.

Forest management from the 1760's until 1830

The crown was not the only forest owner trying to reform silviculture during the second half of the eighteenth century.[33] The state of private woods can partly be established from the reports requested from the county governors in 1785.They were, for instance, required to ask landlords if 'there is wood belonging to the village and if it has been enclosed, what has been done to propagate it, and which areas have been fenced as future woodland'.[34] And some estates clearly included consideration for forestry in their general reforms. This was the case at Skørringegård (Falster) where as early as in 1784 the owner let each of his 75 tenants take out tiny plots (0.07 hectares) of arable land to be used for silviculture.[35]

Obviously, the planting of trees based upon villeinage was characterised by the same low productivity as other forced labour. The peasants observed that they might never themselves benefit from the trees.[36] But numerous estates did, in fact, introduce artificial rejuvenation. Most conspicuous was the propagation of conifers that expanded during this period. In 1785 24 forest owners are known to have cultivated pine, larch or spruce trees. In 1805 this number had increased to 46, and in 1830 at least 106 owners belonged to this category[37]

One of the first private estates to propagate conifers was the small Sonnerupgård on Zealand. Here the 1785 report tells how 'on its adjoining lands is a fine wood of oak and beech trees and abundant young forest in prosperous growth; and additionally a parcel of 35.7 hectares has been enclosed with stone walls and a wooden fence in which seven avenues consisting of lime, spruce and oak trees have been planted, all in excellent growth and here one can see that the acorns that I sowed thirty years ago have grown so much as to give fruit last year, which is rare. In this close and the gardens 150 spruces of 60 centimetres height were planted 15-30 years ago, but now

32. O. Olsen 1976, p. 33.
33. A. Oppermann 1887-89, pp. 27 f; C. Weismann 1900, pp. 19 ff.
34. Kongelige Rescripter VI:3, pp. 102 ff (12.2.1785): 'Om Skov er til Byen, og om samme er udskiftet, samt om Anlæg er giort til Skovs Opelskning, og hvad Jordstykker dertil er indtaget og indhegnet'.
35. Rigsarkivet, Rentekammeret 2485.9 (1785).
36. Skik og sæd hos bønderne, p. 140.
37. B. Fritzbøger 1997A.

they are 10-11 meters tall and with such a girth that they will in a few years be usable as masts for small vessels'.[38]

From the reports produced in accordance with the Forest Conservation Act, a more exhaustive overview of silvicultural activities in private forests can be derived (table 6). The dominant mode of reproduction was natural germination of tree seeds. As the minister in Jelling expressed it: 'Nature is the Sower'.[39] In a majority of woods then no actual silviculture took place apart from sustained conservation.

In 338 (16%) of those 2056 woods from which silvicultural data were found, trees were, however, planted by hand. And in 18% artificial sowing took place. Naturally, this advance of artificial rejuvenation enabled a choice of tree species and the introduction of exotics. The most notable were conifers such as pine and Norway spruce, since the remaining indigenous coniferous species (yew and juniper) were insignificant to forestry. By following the distribution of coniferous plantations throughout the country it is, therefore, possible to follow to a substantial extent the advance of modern forestry. In 1805, however, only 4% of all forests – representing 28 owners – were subject to cultivation of conifers. As elsewhere, conifers appear – for a short period – to have signified reform and modernity.[40]

Active cultivation and propagation of forest trees was not the only ingredient in modern forestry. Regular thinning of the stands appears to have been introduced on some estates by the beginning of the nineteenth century. So Zönniche Müller, owner of Låge Estate in Jutland, states that he 'has all that is useless material cleared from the ground and fosters all that can be expected to grow to trees. In this manner approximately two hundred trees are propagated each year'.[41] Sometimes this kind of silviculture appears to have had strong affinity with customary coppicing, as when we are told that Balle Skov is propagated 'by promoting the best suckers and by using the knife to force them to grow upright and straight'.[42]

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38. Rigsarkivet, Rentekammeret 2485.6: 'På gårdens grund findes god skov af ege og bøgetræer samt ung skov i tusind tal udi god fremvækst, der foruden dels med stengærder og dels med egestakitværk indhegnet og indtaget et jordstykke af ungefær 90000 kvadrat alens størrelse, hvor udi findes ung skov af ege- og bøgetræer i bedste fremvækst; i samme findes 7 anlagte aleer plantede af linde-, gran- og egetræer, alle i ønskelig fremvækst, der ses og den sjældenhed, at de agern jeg for 30 år siden nedlagde var kommet så vidt, at de sidste afvigte år bar frugt. I denne indhegning såvel som gårdens haver findes og for 25 à 30 år siden 150 stk. grantræer da plantet af en alens højde, men nu 16 à 18 alens højde og af sådan tykkelse, at de om nogle få år kunne blive tjenlige til mastetræer for små skibe og jagter'.
39. Rigsarkivet, Rentekammeret 3322.424 (1805): 'naturen er sædemand'.
40. B. Fritzbøger 1997A; J. Tsouvalis 2000, p. 306.
41. Rigsarkivet, Rentekammeret 3322.424 (1805): 'Jeg lader rense fra grunden af alt det uduelige af hvilke og opelskes alle de, der kan ventes at blive til træer. Således opelskes ungefær 200de unge træer årlig'.
42. Rigsarkivet, Rentekammeret 3322.411 (1830): 'Ved at fremelske de bedste rodskud og ved kniven at tvinge dem til en rank og lige vækst'.

Table 6: *Forest tree cultivation in private forests 1805 and 1830.*

County	No. of woods with cultivation information 1805*	Sowing 1805	Planting 1805	Conifers 1805	No. of woods with cultivation information 1830	Sowing 1830	Planting 1830	Conifers 1830
Copenhagen	53	17	29	2	40	15	28	7
Frederiksborg	10	4	7	1	4	1	4	2
Holbæk	45	15	16	7	79	15	21	5
Sorø	137	27	54	12	135	68	93	27
Præstø	181	34	46	9	209	53	93	29
Odense	574	71	83	10	188	79	104	17
Svendborg	407	125	117	31	257	95	176	37
Maribo	243	67	66	6	304	61	177	37
Hjørring	0	0	0	0	29	2	2	2
Ålborg	18	0	0	11	48	4	6	1
Thisted	14	3	14	4	0	0	0	0
Viborg	93	4	3	1	58	6	21	10
Randers	129	8	7	1	86	11	19	4
Århus	145	4	6	0	286	24	56	8
Vejle	296	2	2	1	244	11	23	3
Ringkøbing	0	0	0	0	5	0	0	0
Ribe	42	2	3	0	43	0	10	4
Total**	2056	338	369	73	2015	445	833	193

Notes: * Holbæk 1815, Sorø 1816 amd Thisted 1823; ** excluding Holbæk, Sorø and Thisted 1805

Finally, the drainage that was a major factor behind the reconstitution of the post-reform arable landscape also made its impact inside the forest fence. Several estates on southern Zealand mention that they ditch and drain as the primary ingredients in their silviculture. In Nysø, 'many ditches have been invested in to drain all the *fredskove*'.[43]

On some major estates trials were made with high forest management and a consequent division of the woods into compartments or annual cuts. This was the case on the two estates possessed by the Reventlow family, Brahetrolleborg and Kristianssæde.[44] On Klintholm estate, we recognise the same kind of rotational conservation that appears in article 7 of the Forest Conservation Act resulting in very advanced silvicultural results. 'Of this on four different occasions – approximately in the years 1731, 1743, 1753 and 1763 – every year in approximately equal amounts

43. Rigsarkivet, Rentekammeret 3322.386 (1805): 'Mange grøfter er bekostede til vands afledning i alle fredskovene'.

44. H. C. Elers Koch 1892; G. Begtrup 1806, pp. 747 f.

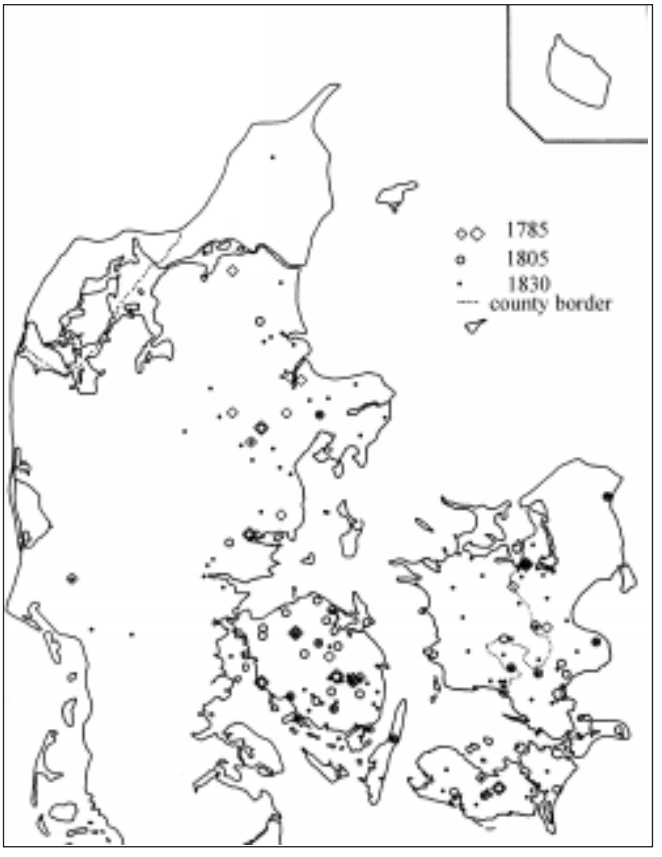

Fig. 44: *The geographical distribution of estates propagating conifers 1785, 1805 and 1830. No data from Holbæk, Sorø and Thisted counties exist before 1830. After B. Fritzbøger 1997A.*

– around one sixth has been fenced off from the remaining forest for plantation and the propagation of young wood, […] all 4 departments in the so-called "*plantehaver*" might total about 44 hectares in geometrical measures'.[45] And at Valdemarsslot, rotations of 100-150 years had been introduced in 1806.[46]

The innate concern over clear felling expressed by the 1805 act is, however, found in the Management Plan for the crown woods issued in 1804.[47] And many private forest owners are likely to have agreed with the owner of Viffertsholm when he noted that he could see 'no use in felling young trees and old trees as well as long as

45. Rigsarkivet, Rentekammeret 2485.9: 'deraf er omtrent 1/6 part til 4 forskellige tider, omtrent i årene 1731, 1743, 1753 og 1763, hvert år omtrent lige meget indhegnet fra øvrige skovstrækninger til plantning og ung skovs opelskning […] Alle 4 afdelinger i de såkaldede plantehaver kan omtrent udgøre 80 td land geometrisk mål'.
46. G. Begtrup 1806, pp. 500, 509.
47. A. Oppermann 1887-89, pp. 58 ff; J. B. H. Pedersen 1947.

they grow and are bearing pannage and leaves'.[48] In Holbæk County we are informed that 'irregular high forest management' prevailed.[49] Its main attribute was the prevalence of selective cutting and the (corresponding) absence of physical portioning of the wood. And this probably applied to most privately owned forests.

Twenty-five years after the Forest Conservation Act, a remarkable advance towards modern forest management had taken place. Tree planting took place in 41% of the woods and the relative impact of conifers had more than doubled. So by 1830 sale of domestic pine and spruce timber was no rarity.[50]

The most conspicuous case of forest management reforms did, in fact, take place far from the traditional woodland zones of eastern Denmark. For most of the eighteenth century, the extensive moorlands of Jutland were considered as potential farmland and forest. But it was not until 1788 that attempts to establish a plantation financed by the state finally succeeded.[51] From then on, both private and state initiatives caused the forest acreage of central and western Jutland to increase continually. In 1816 the acreage of the state plantations totalled some 1331 hectares.[52] A proto-Churchillian motto for the endeavour could have been, as a nineteenth century observer commented, 'plant, and plant and plant again'.[53]

Some of these new woods appear in the governor's reports. One such plantation was initiated in 1827 at Kølbygård in the north-westerly corner of Jutland.[54] Five years later it consisted of 0.6 hectares of ash, birch, hazel, willow, larch and spruce. At the same time, a twenty years old plantation at Ørumgård comprised 5-6000 forest trees and 200 fruit trees. It even had oak and beech trees.

Progressives and procrastinators

Enclosure and conservation against grazing livestock was considered as essential for the introduction of a modern, sustainable forest management based upon the artificial rejuvenation of the trees. And the causal relations between these different kinds of forestry reform are in some cases evident.

In the entailed estate of Tåsinge, it is possible to follow the chronological sequence of enclosure, conservation and silviculture. It had a number of major and

48. Rigsarkivet, Rentekammeret 3322.407 (1806): 'da ejeren ikke indser nytten af at hugge unge træer om for fode og ligeså gamle træer, så længe de står i grøde og kan bære olden og blade'.
49. T. Hasle 1844, p. 178: 'Den uregelmæssige højskovsdrift'.
50. H. Bjerregaard 1828, pp. 48 f.
51. J. Nielsen 1988.
52. A. Oppermann 1887-89, p. 69.
53. C. Diørup 1842, p. 455: 'Pflanzen, und pflanzen und wieder pflanzen'.
54. Rigsarkivet, Rentekammeret 3322.409.

minor woods with a total acreage of approximately 650 hectares.[55] Among the major woods near the estate Valdemarsslot and partly belonging to its *enemærke* were Pederskov (110 hectares), Svenderup Kohave (23), Vemmenæs, Stenørsvænge and Oddermose (53), Tvedskov (48), Nørskov (78), Vornæs Skov (144) and Bregninge Skov (48). In 1806, they were all enclosed except for Nørskov, in which the tenants kept their grazing rights. This was, however, enclosed in 1807 and at the same time conserved. Three years later, only Svenderup Kohave, where the cattle of the manor grazed, remained un-conserved; the remainder were all surrounded by stone or earth walls combined with hedgerows made up of thorny bushes.

This kind of effective abolition of forest pasture enabled silviculture based upon artificial rejuvenation. To protect the woods against the prevailing winds, triple rows of trees were planted as windbreaks on the westerly perimeter of the woods. And in wet grounds within the conserved wood, 7000 alder trees had been planted in 1810. Alder wood was used, among other things, in the local production of clogs. Meanwhile, the heath land covering Bregninge Bakker was converted to coniferous plantations of spruce, pine and larch.

The introduction of new principles of forest management accompanied these silvicultural techniques. In Tåsinge a kind of forestry was introduced where every wood was divided into four 25-year 'periods': in the first two periods, all means should be employed to establish as dense a young stand as possible; in the third, some thinning out should be carried out; and finally in the fourth, additional thinning should be made. In some stands, six or even seven equal periods could be devised.

From the comprehensive reports of 1785, 1805 and 1830 it is to some extent possible to characterise various groups of forest owners in regard to their forest management practices. As it would be too overwhelming a task to identify the social standing of them all, only entailed estates have been singled out.

One would expect that major estates – able to employ skilled chief forest officers – were more inclined to implement forest management reforms than minor forest owners. But no such distinction is detectable. Among the woods belonging to entailed estates in 1805, artificial plantation took place in 11.1% (Σ=1239). But among the woods owned by minor lords or freeholders, a comparable 10.6 were rejuvenated in this manner (Σ=2841).

So no significant distinction could be made between the silvicultural practices of entailed estates and other forest owners. But the average size of the estates in which conifers (283 hectares) were propagated by 1805 was considerably larger than that of all estates (157 hectares).

55. Rigsarkivet, Rentekammeret 3322.400 and 333.41.

If addressing the matter of forest enclosure, the result is more remarkable. In 1805 55.4% of the forests belonging to entailed estates were enclosed (Σ=1239). But that figure should be compared with 67.5% among the remaining woods (Σ=2841). The landed possessions of the forest owner accordingly appear to have had only limited impact on the advance of modern principles of forest management. And the same applies to geographical relations. No evident 'paths of diffusion' have been traced. In this specific question then one might instead employ the 'parachute' model proposed by Dan C. Christensen.[56] The dissemination of ideas and plants appears primarily to have followed social networks defined by family relations.

The Reventlow family could serve as an outstanding example in this respect. In 1779 the Prussian count Hardenberg, who was then married to a Reventlow, sent the young German forester, Georg Wilhelm Brüel, to Lolland to produce a management plan for his estate at Krenkerup.[57] From there Brüel went first to Reventlow's estate on that same island and later to the family's principal manor, Brahetrolleborg, on Funen. In 1805, Brüel finally made plans for the forests of Holsteinborg on Zealand. Its owner was then the young ward of count Reventlow, Frederik Adolph Holstein, who a couple of years later married the daughter from Brahetrolleborg.[58] So Brüel's silvicultural innovations were largely directed by the contacts of the Reventlow clan, and when he later entered state service it was obviously as C. D. F. Reventlow's 'client'.

The rural population frequently opposed forest enclosure and conservation, as they did other kinds of reform. And in some singular cases, their resistance was even supported by the royal *Rentekammer*. At least the owner of Lundbygård complained in 1785 that the tenants in Risby (Bårse parish) were encouraged to object to enclosure of a certain piece of land in order to plant a new forest even though this purportedly happened 'against the royal ordinance of 1733'.[59] Yet to informed observers peasant resistance was in general considered as an impediment to progress.

There are numerous examples of such obstruction. Even though the tenants of Brahesborg (Funen) all held their individual woodlots, they opposed abolition of the common pasture.[60] And in Holstenshus, a group of tenants protested against the enclosure in which they had lost their access to forest pasture.[61] In 1797 an anonymous peasant in northern Zealand disapproved of the crown's silvicultural activities

56. D. C. Christensen 1996, p. 570.
57. S. Balslev 1989, p. 93; Landsarkivet for Sjælland, Forst- og jægermesterarkiver, Forstinspektøren ved Sorø Akademi, Diverse korrespondancer 1791-98.
58. C. Bjørn 1992, pp. 286; Rigsarkivet, Rentekammeret 3322.389 (1816).
59. Rigsarkivet, Rentekammeret 2485.8: 'tvært imod den kgl. forordning af 1733'.
60. Rigsarkivet, Rentekammeret 2485. 10.
61. E. Rasmussen Søkilde 1875, pp. 89 ff.

since they caused him to lose his wood pasture. He 'felt, as peasants usually do, that it would be better to leave it to Nature'.[62]

Rural society should not be considered as inherently conservative. There are also many cases of voluntary reforms initiated or at least supported by the peasantry. On Bornholm, the freehold status, if we are to believe pro-reform writers, in general induced peasants to propagate young trees.[63] And throughout the rest of the country, a number of peasants were saluted as distinguished silviculturalists. The history professor (and dramatist) Ludvig Holberg even concluded that he 'never talks to peasants without learning something. For they only reason about reliable and important matters of which they are informed. It is possible to learn how the soil should be tilled, horses and cattle be kept, the woods be improved, farm houses be built and a proper economy practised'.[64]

One such peasant was the freeholder, Jørgen Kristensen, in Korsbjerg on Funen. In 1777 Ove Malling described how 'one of the things that distinguishes him from the crowd of peasants is the remarkable consideration he has always given his wood. […] Not only has he in many places conserved everything that grew by itself; he has even sowed, moved and planted a multitude of young beech and oak trees and by doing so he now has more than 14 *tønder land* wood on his farm'.[65] In 1771 he was consequently admitted to The Royal Agricultural Academy (*Landhusholdningsselskabet*).

In the middle of the nineteenth century, the botanist Christian Theodor Vaupell remarked that 'during the last years a considerable love for the forest is found among peasants'[66], and during the period 1769-1832, *Landhusholdningsselskabet* conferred numerous prizes on outstanding farmers, 267 of which were given for silvicultural endeavours.[67] The great majority of these, however, concerned planting of willows (outside fences) rather than silviculture in a strict sense. Until 1824 very few

62. L. Engelstoft 1797, p. 44: 'mente, som bønder i almindelighed, at det var bedst, at lade naturen råde sig selv'.
63. Den Danske Atlas III, pp. 166 f.
64. L. Holberg 1971, p. 48 (Epistola 29): 'Jeg taler aldrig med Bønder, uden jeg jo lærer noget af dem: Thi de raisonnere ikke uden om solide og magtpaaliggende Ting, hvorom de vide fuldkommen Besked. Man kand af dem lære, hvorledes Jorden skal dyrkes, Hæste og Qvæg conservers, Skovene settes i Stand, Gaarder bygges, og en skikkelig Oeconomie føres'.
65. O. Malling 1885 (1777), p. 222: 'Noget af det besynderlige, som ellers har udmærket ham fra den store hob af bønder, er den mærkelige omhu, han stedse har vist for sin skov. […] Han har ikke alene på mange steder opfredet alt, hvad der selvvilligt voksede, men endog sået, flyttet og plantet en stor mængde unge bøge- og egetræer, ved hvilken omhu han nu til sin gård har mere end fjorten tønder land vel bevokset skov'.
66. C. T. Vaupell 1862, p. 431: 'I de sidste Aar er imidlertid Kjærlighed til Skov vaagnet hos Bønderne'.
67. O. Degn 1969.

peasants had established small woods on their holdings, so instead of prizes the academy initiated a system of regular economical support.

In spite of prominent exceptions such as these, the peasantry in general appears to have had little interest in the implementation of structural forest reforms – at any rate those peasants for whom enclosure and conservation meant nothing but the loss of natural resources. In those parts of the country where peasant *parcelskove* formed the outcome of the process, owners are likely to have considered the reforms with somewhat greater approval.

Chapter 22

State supervision, forest owners and the landless

Firewood and pasture for the non-propertied

The tradition for considering cottagers and *inderster* (minor landless cottagers) as the losing parties of the land reforms has been modified during the last decades.[1] Both before and after the reforms their access to woodland resources depended on local custom. Within the common rights system, however, custom was formulated exclusively by the village farmers. And in the reform process they were granted very dissimilar compensation for their loss of customary rights. Article 19 of the 1781 Enclosure Act, however, did attempt to protect smallholder interests: 'since smallholder families are regarded as valuable for the common good and especially for the farmers, county governors and members of the Rural Commissions endeavour to consider and decide with the owners, how the pasture rights taken from them in the course of enclosure could be compensated for'.[2]

According to the Forest Ordinance of 1733, cottagers were allowed to receive peat from the bogs.[3] But it was for their landlords to decide the actual level of their fuel allowances. It goes without saying, therefore, that both continued allowances and remuneration in case of conversion to freehold status varied from one estate to another.

Potential pasture for cottagers was often restricted when forest officials conserved the estate woods.[4] But customary rights were usually adhered to. So when the cottagers of Frejlev lost their wood pasture during the enclosure process, they received both fuel wood allowances and compensation areas.[5]

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1. A. Vægter Nielsen 1991.
2. Chronologisk Register 1822, p. 97: 'Da Huusmænds-Familierne ansees nyttige saavel for det Almindelige, som især for Gaardmændene; saa skal Amtmændene og Landvæsens-Commissarierne ved Byernes Udskiftning søge at overlægge og afgiøre med Lods-Eierne, hvorledes dem en forholdsmæsig Græsgang, imod hvad dem ved Udskiftningen betages, efter enhver Byes særdeles Omstændigheder best og belejligst kan være at tillægge'.
3. Dansk skovbrug 1710-33, p. 64. (§42)
4. F. Skrubbeltrang 1940, p. 215.
5. W. von Antoniewitz 1944, pp. 165 ff.

In general, numerous cottagers received a parcel of land as tenancy during the last decades of the eighteenth century.[6] And the same frequently applied to the forest. In 1832 Tebstrup Skov was divided among eighteen farms and a number of cottagers.[7] But apparently landlords were not inclined to permit the building of cottages near their woods. The potential damage from illegal cutting was too much of a threat.[8]

Allowances were naturally abolished when tenancies were converted to freehold, whether based upon tenancy contracts or oral custom. In general, post-reform cottagers and *inderster*, like freehold farmers with no woodlot of their own, had to do with what they could buy in the fuel market. But on some estates, certain social considerations were made in regard to the future wood supply for the poor, just as it was the case in the clause relating to wood collection of the 1781 Forest Ordinance (§9). On the Løvenborg estate, the poor were allowed to collect branches during the late eighteenth century.[9] And in the grove of Tolløkkes Kær that belonged to the small town of Ebeltoft in Jutland, we are told that in around 1800 the poor were allowed to collect sticks one day a week.[10]

As a more general feature, the licence to gather on the forest floor as a parallel to customary gleaning rights[11] might even originate from the reform period, at least as a right in writing in contrast to ancient custom handed down by traditional means. In 1796 the head of the *Rentekammer* proposed that collection of branches could be a universal means of relief for cottagers and paupers.[12] And in Bakkebølle on southern Zealand it was agreed that the forest should be conserved and that 28 cottagers were licensed to collect branches, a privilege they were, however, later prevented from making use of.[13]

Since unemployment and ensuing poverty was considered as an immoral element in the fabric of the Christian society, exhaustive legislation against vagrancy characterised the entire early modern period.[14] The actual extent of this proletariat of outcasts is, however, indeterminable. Approximately 6-8% of the rural population were in need of some kind of social support by the late eighteenth century.[15] And according to some observations, vagrants formed at the same time a conspicuous problem in some regions. From Bygholm the owner, de Thygeson, reported in 1805

6. F. Skrubbeltrang 1940, pp. 308 ff.
7. Rigsarkivet, Rentekammeret 3322.420.
8. F. Skrubbeltrang 1940, p. 225.
9. P. Carlsen 1992, p. 19.
10. G. Begtrup 1810, pp. 163 f.
11. P. King 1989.
12. Reisebemerkungen, p. 67.
13. Rigsarkivet, Rentekammeret 3322.251, no. 47.
14. T. Krogh 1987; T. Krogh 2000.
15. O. Feldbæk 1982, p. 39.

that no progress could be made regarding silviculture partly due to the nearness of Horsens: 'daily the forest is crowded with walkers who are, to say the least, not beneficial for it. And the innumerable gangs of poor people raid it all too frequently and severely in spite of all supervision'.[16]

It is most likely that vagrants were denied access to utilise any woodland resources whatsoever. In some respects the post-reform landscape must have been considerably harsher to live in than the open fields of the common rights period. Forests were closed, property boundaries marked and preserved, and common access to the village fields controlled or impeded. The landscape became more closed than before; and so did the forest.[17]

Petitioning the *Rentekammer*

The positive clauses about forest supervision by state officials combined with the gradual dissolution of the estates system through a transition from tenancy to freehold constituted a new relationship between forest owner and the state. Until then legislation and state intervention had little effect on the actual practice of forest management. But with the Forest Conservation Act state officials suddenly made up an integral part of private forestry in striking contrast to the liberal catchwords of the time.

Whenever major structural modifications or breaches of the Act were intended, prior approval from the *Rentekammer* was to be applied for. For Hvolgård estate, for example, the time limit for fencing the forest was extended until 1811.[18] And as the demands for fuel wood for Copenhagen increased, the owner of the former crown lands under Antvorskov Abbey petitioned in 1810 for a licence to cut and sell 10,000 fathoms of firewood from his forests.[19] He was, however, only permitted to cut half that amount.

When the owner of Frisholt estate near Viborg in 1810 likewise wished to fell trees on the western fringes of his forest, the *Rentekammer* resolved that he was to await a particular inspection by *overførster* Brüel since this was obviously against article 5.[20] And similar examples are legion.

In fact, even the implementation of German High Forest management based upon clear-cuts and other kinds of 'modern forestry' required the sanction of the

16. Rigsarkivet, Rentekammeret 3322.424 (1805): 'Daglig vrimler skoven af spadserende, der i det mindste ikke udretter noget til skovens gavn; og byens talrige skarer af fattige voldgæster den, alt opsyn uagtet, alt for tit og føleligt'.
17. P. O. Christiansen 1996, p. 27.
18. Rigsarkivet, Rentekammeret 3322.251, no. 1398.
19. Rigsarkivet, Rentekammeret 3322.251, nos. 1830, 1850.

Rentekammer.[21] When in 1809 the owner of Charlottedal wished to thin the stands in Lammehaven, he awaited the authorisation of *overførster* Ulrich.[22] But other forest owners shrank from applying this new and radical kind of forest management. The owner of Tyrrestrupgård in Jutland considered 'that to divide the forest into regular compartments and to use so-called forestal treatment I believe would lead to the destruction of the forest here as it has been the case elsewhere'.[23]

State supervision was, however, most acutely urgent in Vejle County since 'in no other county, has deforestation advanced with such unyielding vigour'.[24] As we have seen, the Forest Conservation Act was in general not well observed in those parts of the country where small peasant woods prevailed. The situation was particularly critical in southern Jutland. In 1829, therefore, Frantz von Baastrup was commanded to make a particular investigation (*Skovreguleringen*) of the forests in Ribe County.[25] During the following seven months he accordingly carried out the inspection and meanwhile the governor surveyed the enclosure maps from the area and met with local forest owners.

As a result of this double investigation, the Royal *Rentekammer* in 1835 prescribed the implementation of a general examination of all privately owned woods in Jutland not previously designated as *fredskov*. After such inspections, suggestions were made regarding conservation, future woodland management and the abolition of remaining common rights. In this manner, the number of woods included in the *fredskov* concept was notably augmented.

It was not unusual for compliance with the Forest Conservation Act to be hesitant or even entirely absent. As we have seen, numerous forests were neither enclosed nor conserved a quarter of a century after its publication. And as the activities of *Skovreguleringen* suggest, the gradual introduction of the principles drawn up by the act was slow. The little wood of Skindbjerglund in northern Jutland was, for example, not properly conserved until 1853.[26]

In 1822 the *Rentekammer* concluded that the prohibition against commercial cutting for ten years after the appropriation of a wood was frequently violated.[27] Conse-

20. Rigsarkivet, Rentekammeret 3322.251, no. 1841.
21. J. Mandix 1813, p. 336.
22. Rigsarkivet, Rentekammeret 3322.389. (1816).
23. Rigsarkivet, Rentekammeret 3322.421 (1806): 'at inddele skoven i regulære hugster og bruge såkaldet forstmæssig behandling tror jeg ville her lige som andet steds have skovens ødelæggelse til følge'.
24. A. F. Bergsøe 1847, p. 224: 'i intet andet Amt har Skovødelæggelsen raset med en saadan skaanselløs Voldsomhed'.
25. A. Oppermann 1914.
26. V. Petersen 1988.
27. Rigsarkivet, Rentekammeret 331.1-5 (2.11.1822).

quently, forest officials were ordered to investigate the background each time a public fuel wood auction was advertised.

In article 19 the Act prescribed a fine of 1-5 *rigsdaler* per *tønde land* for negligence concerning forest propagation and conservation. And if trees were felled before the ten-year time limit after appropriation of the wood, then they should be confiscated. Nevertheless, relatively few cases of major transgressions have been found.

Within two decades after the prescribed implementation of the Forest Conservation Act in 1810, 43 cases of forest crimes or related disputes were brought before the Supreme Court.[28] None of these, however, were related to the act whereas the great majority concerned forest theft in royal forests according to the 1781 ordinance and (not so many) on private land in accordance with the 1733 ordinance. A few cases were related to tenants and ministers who had (unlawfully) lost their customary allowance of fuel wood during the enclosure process. And one was about the fence surrounding a woodlot.

Shortly after the issue of the act in 1805, Høgholm Skov in Jutland attracted the attention of the *Rentekammer*. The owner was accused of over-cutting it, and an order was issued banning the future clearing of grazing compensation once the wood was enclosed.[29] In 1808 the *Rentekammer* permitted the owner to divide it into twelve parcels but, on the advice of *overførster* Brüel, it stressed at the same time that no authorisation was given to clear the resulting parcels.

As has been noted, conservation was not necessarily intended for all woods, and there could be various reasons not to attempt modern forest management. Grønskov and Friheden on Zealand were in fact fenced, but their owner remarked that 'the ground upon which the wood stands is a bog next to a brook and it lies so low that it will never become anything but what it is: a bog'.[30] And in Hummeluhr Krat on the Frijsenborg Estate the Rural Commission accepted that it was 'unfit for use as *fredskov*'.[31]

Forest theft in a new context

For the major part of the eighteenth century, penal provisions were based upon the 1733 and 1781 ordinances. The 1781 ordinance prescribed fines for the first and second apprehension of a felon, but if he was caught for a third time, then he should be condemned to perform forced labour. The penalties remained much milder than

28. Rigsarkivet, Højesteret, Slutningsbøger 1810-30.
29. Rigsarkivet, Rentekammeret 3322.251, nos. 451, 609, 618, 684, 704, 820,
30. Rigsarkivet, Rentekammeret 3322.384 (1815): 'Grunden hvorpå skoven står er en mose ved siden af en å, og ligger så lavt, at den ikke kan blive til andet, end hvad den er, nemlig en mose'.
31. Rigsarkivet, Rentekammeret 3322.423 (1831): 'uanvendelig til fredskov'.

those associated with proper theft. But in order to encourage forest supervision, informers were granted half the revenue from the fines – or a third in the case of forest rangers. Naturally, this influenced the standing of forest officials in the rural community – as was the case in Sweden.[32]

In 1765 a public notice issued in conjunction with the silvicultural experiments in Zealand reiterated the fundamental distinction between ordinary forest theft and theft of stacked fuel wood.[33] The latter should be considered as major theft and not persecuted by the Forest Tribunal but by the ordinary courts.

The Forest Ordinance of 1781constituted a general position against unauthorised passage in the royal forests.[34] No similar clause concerning private woods was contained in the Forest Conservation Act of 1805. Still, the ordinance on fences from 1794 held it as a general prescription that 'he who needlessly jumps over another man's fence where there is no stile or lawful footpath shall pay a fine of 8 shillings'.[35]

As a part of the general showdown with 'the old order', the existence of departmental courts such as the Forest Tribunal, which permitted no appeal, was heavily criticised by jurisprudents.[36] In 1788 they were consequently abolished, and forest theft was submitted to the ordinary courts.[37] Its cases were transferred to the ordinary court system, but the legal usage applied still differed from ordinary practice.[38] The offender could, for instance, be requested to vow his innocence.

After 1805 several tentative efforts were made to regulate public access to private forests in detail. In 1816 the *Rentekammer* produced a draft ordinance but it never received the king's signature.[39] And forest theft was not covered by specific up-to-date legislation until the issue of a general criminal code in 1866.

By the middle of the eighteenth century, the extent of illegal forestry was colossal.[40] Entire villages were regularly sentenced for forest theft. And the repeated absence of parts of the work force for the sake of imprisonment or punitive labour naturally affected the general state of peasant economy. It was therefore suggested that, when large groups of felons were apprehended, two of them should be picked out to serve the sentence for them all.[41] This was, in fact, done in some cases.[42] The *Rentekam-*

32. P. Eliasson 2002, p. 294.
33. A. Oppermann 1929, p. 74.
34. Chronologisk Samling, pp. 244 f (§35).
35. Chronologisk Register IX, 1797, pp. 219 f: 'Den, som uden Nødvendighed springer over anden Mands Hegn, hvor ingen Stente eller lovlig Fodstie er, skal […] betale i Straf 8 Skilling'.
36. H. Stampe 3 (1795), p. 4.
37. O. H. Krabbe 1914, p. 102; A. Oppermann 1929, p. 75.
38. J. Mandix 1813, pp. 349 ff.
39. A. Oppermann 1926.
40. Rigsarkivet, Rtk 333.740 (1760).
41. Rigsarkivet, Rentekammeret 331.1-5 (26.1.1730).

mer, however, opposed such arbitrary punishment and preferred a short corporal corrective instead, even though arbitrary punishment was not unknown to eighteenth century Danish criminal procedure.[43]

The literature on local history contains plentiful accounts of forest theft.[44] But unfortunately no wider inquiries into the subject have been made. In some regions, minor craftsmen appear to have been prominent among the forest thieves. In Central Jutland, the traditional production of clogs caused persistent misdemeanours. In 1761 300 clogs were sold by auction in order to enable the producer to pay his fines.[45] A rapid overview of the records of the Forest Tribunal gives the impression that the penalty in such cases was frequently reduced.[46] The explanation given often stressed poverty, the insignificant amount of wood stolen or its employment for the maintenance of buildings. In the 1770's a significant number of inhabitants on Bornholm were likewise punished for forest theft.[47]

In order to provide some impression of the quantitative import of the phenomenon, a statistical analysis of a few records from the Forest Tribunal in Skanderborg Cavalry District for the period 1736-65 has been conducted. [48] Firstly, the annual number of offences was considerable. Of the total number of crown holdings in the district, approximately two out of three were affected by forest theft prosecutions every year. Secondly, the varying annual number of miscreants per village appears to reflect levels of supervision rather than the actual crime levels. Thirdly, almost all illegal woodcuts were for domestic use – not for sale. And finally, a great many of the apprehended peasants were charged for cutting 'in their own parcel'.[49] Finally, it should be noted that reduction of the punishment prescribed was frequent.

Forest thieves also frequently haunted private woods, but here trials took place in the ordinary courts. In Holstenshus, no social distinctions could be traced among the felons condemned in the local court. In some cases, major farmers were even detained for stealing considerably quantities of wood presumably intended to be sold.[50]

The segregation of all conserved woods from the neighbouring rural society constituted a major break with the traditional conception of the landscape. Woods cov-

42. O. Krabbe 1914, p. 104.
43. T. Krogh 2000, p. 263.
44. E.g. P. Jensen 1896, pp. 86 ff.
45. Rigsarkivet, Rentekammeret 333.740.
46. E.g. Rigsarkivet, Rentekammeret 333.740.
47. F. Thaarup 1839, p. 211.
48. Rigsarkivet, Erslev: Regnskaber 18: Skov- og jagtsessionsregnskaber, Jylland og Fyn 1745-63; Rentekammeret 333.739-740.
49. Rigsarkivet. Rentekammeret 333.740 (1761): 'paa sit eget skifte'.
50. E. Rasmussen Søkilde 1875, p. 94.

ering common fields or *overdrev* were no longer accessible to everybody. Access to fenced woods abandoned by those animals that used to graze the forest floor was now restricted to professionals. And in those estates where these provisions were observed, it was obviously as a means to reduce the menace of forest theft. Still, traditional crime continued.

In less wooded regions, the illegal apprehension of young trees would often make plantation efforts ineffective. In 1785 the owner of Hvidstedgård (Jutland) complained that 'as soon as a branch or a trunk becomes high enough to be usable as stock or flail, it is immediately stolen by the peasantry whose poverty and wretched condition ensure that hardly anybody can keep anything in peace'.[51] And he was supported by Jens Bergh to Vogn, according to whom 'the want of trees in this region causes them to be wrecked or pilfered as quickly as they grow'.[52] In 1785 the owner of Skovsbogård in addition considered that the propagation of new woods had no future since forest theft was so widespread.[53]

Traditionally, forest theft is regarded as an enduring menace during substantial periods of the nineteenth century.[54] In its first half, numerous felonies took place in Svenstrup Estate.[55] But – and this is significant – they were not handled by the local court but appear to have been settled by the offender and the estate chief forest officers.

In 1836 bishop Mynster noted in his journal of visitations that the inhabitants of Kirkerup in Zealand were universally acknowledged as renowned forest thieves.[56] And during the first half of the century, forest owners often complained about their restricted means to prevent theft.[57] From Ørritslevgård in Funen, the owner wrote to the *Rentekammer* in 1806 that 'The greatest menace in this largely treeless region is (apart from forest theft) nutting by which the hedge surrounding the forest as well as the hazel coppice suffers tremendously as entire crowds of farm hands from afar flock to the spot'.[58]

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51. Rigsarkivet, Rentekammeret 2485.14 (1785): 'så snart en gren eller stamme bliver så høj, at den kan tjene til svøbeskaft eller plejl, bortstjæles den straks af almuen, hvis fattigdom og usle tilstand gør, at ingen næsten kan beholde noget i fred'.
52. Rigsarkivet, Rentekammeret 2485.14 (1785): 'den mangel, der haves her i egnen på træer gør, at det bliver spoleret og bortstjålet lige så stærkt, som det opvokser'.
53. Rigsarkivet, Rentekammeret 2485.12 (1785).
54. E.g. C. Weismann 1900, pp. 13 f.
55. F. Heide 1921, pp. 51 f.
56. F. Jacobsen 1940, p. 45.
57. O. H. Krabbe 1914, p. 105.
58. Rigsarkivet, Rentekammeret 3322.396 (1806): 'Den største plage, som denne for det meste skovløse egn af landet er udsat for er (foruden en del skovtyveri) nødeplukkeri, hvorved hegnet omkring skoven og hasselgærdselen lider forskrækkelig, da hele flokke af langt fraliggende bønderkarle strømmer til'.

Nevertheless, after the enclosure some landlords continued to expect their tenants to supervise their own woodlots, and they were accordingly held responsible if anything was cut illegally. But in 1807 Hans Jørgensen and Peder Greve, tenants under the Hvedholm estate, complained that they had been sentenced to pay a considerable fine since some small oak and beech trees had been stolen from their lots. They now wished that their landlord would seize the woodlots, since they were unable to 'guarantee that no-one else cuts in them'.[59] In dealing with this case, the *Rentekammer* resolved that it would issue a code that whenever a landlord wished to employ his tenants as forest supervisors, this should be included in the tenancy contract.

Comprehensive evidence from the royal forests of northern Zealand indicates that forest theft continued to a substantial extent after their enclosure in the 1780's.[60] But even after the abolition of the Forest Tribunal in 1788, such cases were still not treated by the regular courts. Instead, felons appear to have been fined administratively without trial. And even though monthly and annual fluctuations were considerable, the general level of wrongdoing continued to be considerable. In the Second Kronborg Forest District an average of 11 felons were apprehended each month; however, during winter and spring the mean figure was 18 whereas it was 5 in summer and autumn.

It is hardly surprising that forest theft continued when the majority of the rural population was shut out from the forest. Far more amazing is the fact that a distinct decline in this felony was already discernable in the 1840's, when the state attorney specialising in infringements of forest legislation was finally dismissed.[61] Some of this alleged reduction might arise from unwritten settlements achieved without the involvement of the court system. But an increasing silence on this matter in the literature of the middle and late nineteenth century suggests that in general the decline was real.

According to the official statistics, forest theft gradually ceased to be a problem. And when the crime was included in the general criminal legislation (and statistics) as ordinary theft in 1866, it was almost non-existent.

This post-reform development makes Denmark notably different from its neighbours. Nineteenth century unrest originating from restricted woodland resources is a well-known theme in European history.[63] Social unrest did also occur in Denmark,[64] but in general it had little political impact and no connection with firewood supplies whatsoever. Danish forests had apparently ceased to fuel social unrest.

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59. Rigsarkivet, Rentekammeret 3322.251, no. 551: 'det skal være dem umuligt at svare for at andre ikke hugger i dem'.
60. Rigsarkivet, Rentekammeret 3324.124-128.
61. O. H. Krabbe 1914, pp. 105 f; C. Christensen (Hørsholm) 1879, p. 98, note 2.
62. Statistisk Tabelværk I:13, II:20 and III:14.
63. I. Schäfer 1992; P. Sahlins 1994.
64. E.g. J. Engberg 1973.

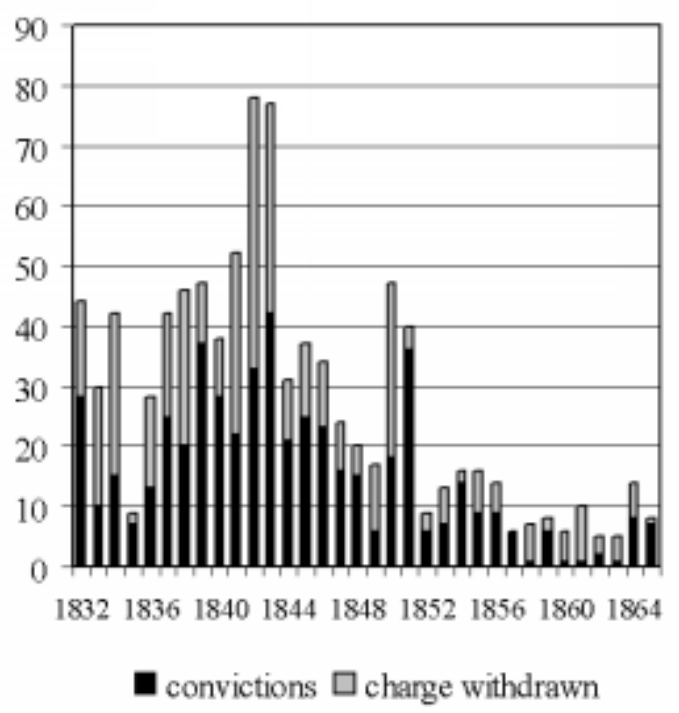

Fig. 45: *Forest theft rulings 1832-65 according to the official criminal statistics*[62].

In northern Sweden, forest theft continued to be a matter of importance: in the 1870's approximately 700 annual cases were still tried in the courts.[65] The same was the case in England[66] and France.[67] And in Germany forest theft experienced a virtual boom after the land reforms. In the 1850's the kingdom of Prussia had no less than 265,000 cases each year compared with 35,000 cases of ordinary theft.[68] Here, the lack of firewood was indeed a social issue.

Against this background the Danish development is extraordinary. Firstly, it appears as if the compensations granted to former holders of underwood and grazing rights served one of their purposes, namely to avoid social unrest. And secondly, the international market must have been able to supply sufficient energy.[69]

65. P. Eliasson 2002, pp. 358 ff.
66. B. Bushaway 1982, p. 208.
67. A. Brosselin 1977.
68. D. Blasius 1978, p. 81; J. Mooser 1984, p. 50; R. Prass 1996, p. 65.
69. T. Kjærgaard 1994A, pp. 122 ff.

Chapter 23
Discussion: The principle of order

The second half of the eighteenth and the first of the nineteenth century formed one of the most essentially innovative epochs of Danish history. Major changes took place in all aspects of public and private life. But among the most fundamental were the transformation of the property structure. During the 1770's the crown sold the major part of its remaining landed property to private landlords and freehold peasants. Meanwhile, a gradual transition from tenancy to freehold was initiated on numerous privately owned estates.

Even more basic, however, was the transition, prompted by the enclosure movement, whereby 'rights that were non-specific and based on custom became formalised and temporary'.[1] Through the abolition of ancient common rights, the definition of landed property was made unequivocal, in compliance with the liberal economical theories of the time. Still, as perceptively stressed by the jurist Frederik Vinding Kruse, reform legislation 'which upheld the right to private property and its unrestricted development for individual productive labour while at the same time counteracting its misuse by means of robust coercive regulation'.[2]

The reforms had an immense impact upon forest ownership, since it was here that the most elaborate forms of traditional common rights prevailed. The abolition of the vertical commonage between the holders of trees and pasture enabled effectual conservation and the introduction in praxis of new principles for forest management. But, as far as the theory was concerned, the structural and spatial forest changes of the reform period were chronologically anticipated by the notion of 'measurable forests' developed within German theoretical forest management and made manifest in the reforms of C. C. von Gram and J. G. von Langen.[3]

As with the land reforms in general, it was widely believed by the reform fathers as well as by later observers that apprehension of full property rights by the peasantry would in itself bring about a rise in productivity. And silvicultural innovation did, in

1. U. Rosén 1991, p. 263: 'ospecifika och på sedvana grundade rättigheter blev formaliserade och tidsbegränsade'.
2. F. Vinding Kruse 1929, p. 251: 'lovgivning, der paa en Gang haandhævede den private Ejendomsret og dens frie Udfoldelse til individuelt produktivt Arbejde og samtidigt gennem kraftige tvingende Regler modvirkede dens Misbrug'.
3. H. E. Lowood 1990, pp. 320 ff; see also T. Munck 2000, pp. 13 f.

fact, increase in speed after the restructuring of property and use rights. So in 1843 it was contended that in Odense County the Forest Conservation Act 'in conjunction with the better insight of forest owners and the increased interest in silviculture brought on by wealth has […] happily contributed to the advance of the forest'.[4]

Nevertheless, the association of forest enclosure with the abolition of wood pasture and the introduction of new species and management methods was not unambiguous. In numerous enclosed woods, grazing continued in spite of legislation and other reform inciters. And in quite a number of forests, wood pasture was even regarded as an element of the management enterprise. Still, in general the great majority of Danish woods were both enclosed and conserved by the end of the period considered here. That is early compared with almost any other European country. How could this be?

A long tradition considers the Forest Conservation Act of 1805 as the foremost cause of the Danish transition from extractive to sustained forest management.[5] And even among present day historians, the Act is normally regarded with no less reverence than it was a century ago;[6] perhaps with one notable exception.

To Thorkild Kjærgaard, this conception rests upon a 'legalistic fallacy'.[7] It was the employment of wood substitutes for both fuel and construction that saved the woods. 'No matter what had been done by the beginning of the nineteenth century, Danish woods would probably have been rescued'.[8]

Naturally, Kjærgaard has a point: legislation alone solves no problem. And, as we have seen, the focal issues of the Forest Conservation Act – enclosure and conservation – were inaugurated long before the formulation of the act. Factors other than legislation, clearly, influenced the process.

On the other hand, intense deforestation did take place throughout Denmark during the reform period, and the reduction of the forest acreage might well have continued if the development had not been stopped or at least slowed down by the state supervision which followed from the restrictive act. So to judge the effects of legislation by focusing upon its preconditions is hardly an advisable historical method.[9]

Forest enclosure and conservation should be considered as elements of the gen-

4. J. A. Hofman (Bang) 1843: p. 155: 'i forbindelse med skovejernes bedre indsigt og den med velstanden stigende interesse for skovkulturen har […] bidraget på en glædelig måde til skovenes fremvækst'.
5. E.g. N. K. Hermansen 1955.
6. E.g. A. S. Mather et al. 1998.
7. T. Kjærgaard 1994B, p. 321.
8. T. Kjærgaard 1994B, p. 328: 'Uanset hvad man havde gjort i begyndelsen af 1800-tallet, ville de danske skove formentlig være blevet reddet'.
9. B. Fritzbøger 1995B.

eral land reforms of the period. One of their basic notions was the accent on private property. Reventlow hoped that reform legislation should 'be distinguished by the same meticulousness for the sanctity and inviolability of property, which so happily characterises Your Majesty's laws'.[10] And in 1801 a public notice was issued stating that private property should only be reduced when such action served public interests. [11] If this were to occur, it should always be followed by total remuneration.

The enclosure of common woodland property expressed a transition from oral custom to written property rights. But in general the rights enclosed in traditional law were acknowledged during the process. So even though the reforms did result in an aristocratisation of forest ownership, the previous holders were recompensed.

Post-enclosure forest ownership was based upon the principle of order. Stringent relations between owners, workers and customers replaced the confusion of common property and use rights characterising traditional rural society. And a similar order distinguished the configuration of the post-enclosure cultural landscape. Scattered and irregular stands of trees and undergrowth were eliminated as the arable experienced exceptional growth during the nineteenth century. But, although woodland now appeared primarily as closed geometrical patterns, the new arable landscape was in no way devoid of trees.[12]

In conspicuous contrast to previously, the enclosed landscape was mono-functional. The cattle grazed in fenced paddocks and on fallow land. Each part of the multi-field rotation system of the arable was regularly surrounded by hedges and ditches, and the interior, apart from fallow pasture, was used for plant production only. The woods were fenced and conserved from browsing animals, whether managed by estate officials as high forests or by freehold peasants as coppices. This was in order to promote the one production now linked to this part of the landscape: wood for fuel and minor timber.

In contrast to those theories of total economic freedom upon which parts of the European reform movement were based, the state played a prominent part in the reconstruction of society. And what is more, as is stressed by Thorkild Kjærgaard, the state was obviously one of the great winners of the transition. It is, of course, a matter of debate whether this outcome was in fact anticipated or even designed by the reformist politicians. But hardly anywhere is the deep state intervention in productive life more evident than in the matter of forest supervision. Even though state forests made up only a minor part of the total woodland acreage of nineteenth cen-

10. Cited from A. Linvald 1923, p. 230: 'den Omhyggelighed for Eyendoms-Rettens Hellighed og Ubrødelighed, hvilken saa hældigen carakteriserer Deres Majestets Lovgivninger'.
11. C. Bjørn 1995, p. 157.
12. B. Fritzbøger 2001.

tury Denmark, state officials played a prominent part in the shaping of modern forestry.

Not being influenced by strictly 'physiocratic' thoughts, Denmark did, however, experience the same worship of nature that characterised substantial elements of that bundle of ideas known as 'enlightened'.[13] So, as a curious parallel to the principle of order, Nature was considered the principal guide in large areas of reform legislation. According to the 1781 Forest Ordinance, forest management intended to 'support Nature in its effects'.[14] Still, instead of conceiving the two principles as opposed, Nature was the supreme or even divine ordering of the world.

Forest enclosure and conservation formed an inherent part of the all-embracing land reform process. And these structural reforms blazed the trail for the subsequent introduction of new management principles and the resulting long-term sustainability of Danish forestry. Still, the question remains why this significant transition was possible at this point in history when all prior attempts to halt deforestation had been void. Naturally, the dissemination of ideas and plants formed a necessary basis for the reformation of silviculture. But the basic obstacle remained forest pasture. How could it suddenly be abolished?

One answer would be that grazing livestock was concentrated in different areas than before, that grassland pasture, so to speak, replaced wood pasture. This transition was partly accomplished by the distribution of those lands in return for the customary grazing rights, which caused the gross deforestation of the reform period. But to complement this important factor, it is worth noticing that the output from forage plant production is assessed to have grown significantly during the later part of reform period. As stressed by Thorkild Kjærgaard among others, the increasing employment of stall-feeding reduced the demand for pasture.[15]

A final, albeit indirect, factor was naturally the increasing requirement for fuel wood, which induced the government to issue the Forest Conservation Act and to continuously enforce it by means of supervision. In fact, the presentation of county reports continued until 1888.[16] Notwithstanding the fact that numerous forests were enclosed as well as conserved before 1805, I detect – in contrast to Kjærgaard – no quantitatively significant progress for Danish woodland before this year.

In general, the structural reforms were clearly not the making of legislators. But the effectual insistence on sustained forest conservation during the ensuing decades certainly was. *Skovregulering*, for instance, was employed to prevent renewed waves of deforestation during the severe economic crisis of the late 1820's.

From the point of view of agricultural production then the late eighteenth cen-

13. J. Radkau 1997.
14. Chronologisk Samling, p. 253: 'understøtte Naturen i dens Virkninger'.
15. T. Kjærgaard 1994A, pp. 72 ff; see also O. Højrup 1964, p. 514.
16. A. Oppermann 1890.

tury incorporated the conditions necessary for forest management reforms. Nevertheless, the abolition of ancient forms of common forest ownership did also constitute a major break in the relation between the rural population and the cultural landscape. As the majority of all woods turned into estate *enemærker*, ordinary people were excluded. An ever-growing part of the Danish population with no access to woodlots of their own was consequently reduced to buying firewood and timber on commercial conditions.

In remarkable contrast to the development in most European countries, this exclusion of the rural population from the forest took place with virtually no insurgency. On the contrary, the level of forest theft declined manifestly during the first half of the nineteenth century. As noted by Claus Bjørn, the protracted advance of capitalism took place with remarkable peacefulness.[17] Maybe the social regard for cottagers taken by the reform legislators worked as intended. Denmark never became the playground of zealous political insurrections.

17. C. Bjørn 1998.

PART V

Overview and conclusions

Chapter 24
Property and power

During this seven hundred year period, Danish woodland ownership developed from something fairly similar to the 'open access pools' of modern economics to undivided individual property heavily controlled by the state. Disregarding all teleological predispositions, therefore, the overall direction was unquestionably one from common to individual.

Still, this conclusion needs qualification. Firstly, the actual significance of thirteenth century *almindinger* remains uncertain. When compared with current theories about early medieval land ownership in general, it is far more likely that those privately owned woodlots that appear in both provincial laws and documents predominated. Secondly, archaeological findings suggest that Iron and Viking age societies were characterised by individual farm lots rather than by those open fields later dominating the entire cultural landscape.

There are no semantic fixed points when examining property rights in a long time perspective. The composition of the 'bundle of rights' that constitutes property varies in time and place. So comparative studies of property rights must consider the social, economic and political contexts in which these rights unfolded. Furthermore, natural resources as complex as woodland are bound to produce highly multifaceted property rights as numerous forms of 'output' were subjected to them: potential arable, meadows, pasturage, timber, pannage, fuel wood, fence pickets, mushrooms, berries, social standing, recreation etc.

The development of property rights to woodland resources was clearly accelerated during this period. Twelfth and thirteenth-century evidence focuses primarily upon the distribution of use rights. It distinguishes between individual rights to closes and common rights to *almindinger*. But already shortly after (or simultaneous with) the issue of provincial laws in the thirteenth century, the unlimited licence to utilise the latter was clearly restricted. In substance if not always in phrasing, *almindinger* were replaced by *overdrev*, to which only a specific, well-defined group had access.

The clerical and royal predominance in the production of written evidence seriously obscures the distribution of resources among the social groups. Medieval Danish society was far from egalitarian, and it is highly unlikely that usage of *alminding* woods was virtually open to all. As the unspecified 'peasants' of the provincial laws

are most liable to be identical with the indefinite class of freeholders, the *coloni* and *inquilini* – not to mention the slaves – were probably excluded from the commons. But we don't know.

The social illegalities in regard to woodland management do not become perceptible until the feudal relation between lord and peasant was extended to woodland usage at some time during the Middle Ages. The vertical commonage expressed by the distinction between overwood and underwood that lasted until the land reform period emphasises the distributive character of property rights. But the designation of *overdrev* participants and the implementation of rights to overwood vs. underwood and pasture also signify the predominant importance of use rights in contrast to more intangible and elaborate kinds of ownership.

This predominance is also evident in the way in which *overdrev* were initially divided. It was the use of specific natural resource layers – wood or pasture – rather than their totality that was shared by a certain number of farms. So, when individual rights were devised, they were founded upon various modes of arithmetical fractioning rather than a physical allotment.

The widespread demarcation of village and estate boundaries during the fifteenth and sixteenth centuries accordingly implies a more radical articulation of property rights. But, in the case of peasant villages, the numerous perambulations conducted in order to establish the border between two neighbouring settlements obviously focused upon just one resource at a time. The border might indicate to which village a specific tree and its fruits belonged. But in general it did, for example, not concern pasture rights. So this kind of property rights demarcation was comparable with the discrimination of village arable incorporated in the common pasture of a range of settlements. Again, the rights to employ a specific woodland resource – not total dominion – was the issue.

The gradual formation of manorial *enemærker*, however, clearly stood for a positively different sort of property rights manifestation. Apart from those vaguely described individual woods appearing in *Skånske Lov*, we have here the first claims of total, undivided use rights that in retrospect resemble the property rights concept developed during the nineteenth century. In these *enemærker*, the owner could use all resources as he pleased. But, firstly, state intervention increased notably during early absolutism. And secondly, tenants might be entitled to be allowed fuel wood from such woods.

Yet feudal lords were not alone in establishing *enemærker*. The minor woods or woodlots perambulated by numerous freeholders during the same period appear also to have served as *enemærker*. But here property rights were obviously restricted by holders of *herlighed*, co-heirs and state-legislation.

The great majority of peasant woods were located in the village fields and meadows and, hence, partitioned with them. But from the fifteenth to the eighteenth century, a physical designation of woodland borders similar to the one

applied to *enemærker* divided the former peasant *fællesskove*. The farm-based woodlots resulting from this kind of division, however, did not imply the same total property rights as did the *enemærker* mentioned earlier. In the sense that the woodland possession of each tenant farm was now defined by its perimeter, the allotment clearly reflected a sharpened definition of use rights. But since each parcel usually continued to partake in traditional commonage, use rights rather than ownership was still of prevalent interest. So, just as woods covering the open fields, allotted peasant woods were normally subject to common (horizontal) pasture and common (vertical) employment of their trees.

In broad outlines total forest ownership was not an issue before the reform breakthrough of the late eighteenth and early nineteenth centuries. By then, the creation of unambiguous and ideally unrestricted private property rights was a primary motive power behind the comprehensive reformation of forestry and property structures. In order to accomplish a transition from traditional multifunctional woodland management to modern mono-functional forestry (i.e. wood production), old common rights based mainly upon the utilisation of various resources had to give way to total control over the entire forest.

Through woodland enclosure, property rights were re-allocated. The use rights for centuries related to tenancy were abrogated in the shaping of an allegedly total woodland ownership. The previous holder of overwood rights – in most cases a landlord – would now own the forest 'with the same right and privilege as the clock in his pocket'.[1] And to achieve this goal, the rural population was largely excluded from the now enclosed and gradually fenced-off woods.

But ironic as it might appear, this final establishment of private property in relation to woods was only accomplished by intense state intervention. And since the political objective was not only the eradication of common rights but also the creation of sustainable fuel and timber supplies, the intervention grossly reduced the scope of private property.[2] So the administration of a conspicuously restrictive legislation largely succeeded in excluding or reducing the right to alienate, consume, waste, modify or destroy, the right to decide how and by whom a thing should be used and basically the right to exercise exclusive control through the newly achieved property rights of Danish landlords. In this respect, the interrelation between proprietor and state replaced the ancient commonage between lord and peasant.

Most essays on Danish history treat the medieval period (*c.* 1100-1500), the early modern period (*c.* 1500-1800) and the nineteenth century as well-defined temporal units. For two reasons I have done otherwise. Firstly, our early medieval starting

1. C. Olufsen 1811, p. 54: 'med samme ret og rettighed som uret i hans lomme'.
2. A. Aagesen 1872, p. 1.

point is dictated by the appearance of relevant sources and not by any marked transition of property forms, although we do not, of course, know what preceded the state that is reflected in the provincial laws. Open access to *almindinger* as well as the reality of privately possessed woodland is, however, likely to have a long pre-history.

Secondly, the formation of distinct feudal relations of production after the fourteenth century demographic recess constitutes a real *caesura* in property relations. Through discrimination of resources (overwood, underwood, pasture) the feudal relation of lord and tenant was directly applied to woodland management. From it originated the prohibition that peasants should not cut large trees in their own holding, the seigneurial claim of certain rents as well as the (complementary) tenant entitlement to be allowed firewood and timber. And since this basic configuration of forest use rights persisted until the late eighteenth century, the entire period has been treated as a whole. With regard to woodland property rights, no chronological break *c.* 1500 is accordingly relevant. In this respect, traditional historical materialism – or the protracted Middle Ages of Jacques le Goff – serves as a more appropriate periodical system than a traditional distinction between medieval and early modern.

The content of the bundle of rights that constituted ownership was inconstant. So, even though the historical evidence is rarely detailed enough to reflect all potential ingredients, a broad outline of changes is perceivable.

Based upon evidence from Danish towns, it has been demonstrated that actual possession (*possessio*) formed the basal constituent of medieval property rights.[3] This is amply supported by the present study. Custom, therefore, tends to be the primary argument in property conflicts. 'The further back in time one goes investigating the legal matters of the ancient Germans, the more confidently one reaches the conclusion that different real rights only constitute grades of the same basic concept. The basis is identical for them all: the actual possession of the thing in question'.[4] But since woods included numerous different natural resources the possession of which was frequently separated, what was at stake was not the possession of the wood but rather specific use rights (*jus utendi*).

Partial use rights were embraced by various modes of commonage reaching from the universal permission to use trees in medieval *almindinger* to nineteenth century easements. But during most of the period, two particular kinds of common rights predominated. Firstly, the members of the village commune frequently shared the

3. O. Fenger et el. 1982.

4. C. Kjer 1889, p. 109: 'Jo længer tilbage man naar i Undersøgelsen af de urgermaniske Retsforhold, desto bestemtere kommer man til den Anskuelse, at de forskjellige tinglige Rettigheder kun ere forskjellige Grader i det samme Grundbegreb. Udgangspunktet er det samme for dem alle: den faktiske Ihændehavelse af vedkommende Ting.'

forest floor pasture and sometimes they even joined in coppicing the underwood. This has been designated as *horizontal commons*. And secondly, lord and tenant employed the same area for different purposes: the first for cutting tall trees, the latter for coppicing and grazing. This was *vertical commons*. Still, the very notion of social distinctions in regard to property rights is related to some other components of the bundle, which also appear to have been present – at least in theory – during the high Middle Ages.

The sincere concern for inheritance that is reflected in the provincial laws of the thirteenth century represents more comprehensive aspects of property rights than simple possession. And the same applies to the notion of 'another man's wood' frequently appearing in *Skånske Lov*. In both cases, the property claim obviously exceeds simple use. Inheritance and undivided possession of a certain piece of forest presupposes a right both to alienate and bequeath and to decide by whom it should be used; hence, a more extensive kind of ownership. So, although a general trend seems to go from common to private, the two abstract opposites were present (in changing proportions) during the entire period.

The difference between partial use rights and more wide-ranging property rights was most lucidly reflected in the disparities between the standing of lord and tenants. Yet, even though the tangible distinction was evident it was not furnished with a legal conceptualisation until rather late. In Sweden, the theoretical distinction between *dominium directum* and *d. utile* was first devised in the sixteenth century.[5] And something similar appears to apply to Denmark.

In the feudal relation of lord and peasant, two different realities of ownership emerge. Naturally, the two parties restricted each other's use rights. And in tenancy woods, the landlord could clearly not be said to have exclusive control similar to that which he exercised in *enemærkeskove*, where his rights were comparable to the *dominium plenum* of classical jurisprudence. In most cases, he proved, for example, unable to control the woodland management carried out by his tenants. And in this respect, he had no effective immunity against expropriation. When peasant forestry of the seventeenth and eighteenth centuries resulted in overwood reduction and underwood persistence, this did in fact represent a transition of property; a transition that was the primary incentive behind the numerous upper class clamours about deforestation characterising that period.

But even though theoretical jurisprudence and reality were at some points far apart, the landlord did hold some rights superior to those of his tenants. Most notoriously, he received various annual payments for his *herlighedsret* over the wood. This aspect was, in fact, so prominent that the authorities used it to establish property relations in cases of doubt.

5. P. Jonsson 1989, p. 65.

More than anything else, the land reforms of the late eighteenth century were property reforms. By abolishing customary open field communalism in arable and meadow as well as in the wood, traditional low productive peasants were to become modern farmers excited by possessive individualism. And by the somewhat more gradual transition from tenancy to freehold, these entrepreneurs were to be relieved from seigniorial subjugation and set free on a still more vigorous world market. Both aspects of the reforms deeply influenced property relations.

In forest enclosures, the holder of the overwood was in general acknowledged as the future owner. So in most cases the actual forest ownership was transferred from the village community to estate. In this process tenants were for the most part compensated for their losses. But since grazing remunerations were often either devoid of woodland or cleared shortly after, the forest enclosure meant a *de facto* exclusion of country dwellers from the woods. For landlords centuries of debasing impotence due to common rights had finally come to an end.

It is widely believed that property rights presupposes scarcity, that general abundance would, so to speak, hinder the development of such rights. It is therefore natural to explain the gradual refinement of woodland property by means of the evidently increasing wood shortage that characterised the entire early modern period. This also applies to the case of Denmark.

At least it is evident that a gradual deforestation coincided with the amplification of property rights. Palynological evidence confirms that the early Middle Ages as well as the Iron Age were characterised by substantial regional differentiation concerning forest cover. Several cases reflect local shortage – often of certain kinds of wood. And such examples become still more frequent during the early modern period. As stated in a mid-sixteenth century document: 'in places where the cutting of sticks and fuel wood took place before, not even a twig is found'.[6] It nevertheless appears that until the seventeenth century, rural society's demands were largely met by domestic production of fuel wood and timber.

The excessive requirements of crown and military appear to have been met by the woodland expanses in Skåne and Gotland and by imports from Norway. But after the loss to Sweden of the Danish provinces east of the Sound, industrial, naval and other large-scale demands were on the whole met by imports.[7]

State policies and legal usage endeavoured primarily to prevent future deficiency rather than reducing the existing shortage of certain wood products. And in this undertaking focus was mainly upon the gradual conversion of overwood, producing timber, fuel and mast (and rent), to underskov, producing fuel and wicker.

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6. De ældste danske Archivregistraturer IV, p. 306 (1555): 'forthij att ther som tiillforn stodtth staffuer och wedhøggehe, er nu aldrig quisth'.
7. F. A. Rasmussen 1996.

Yet, as long as no obvious alternatives to fuel allowances and forest pasture existed, the seigneurial claim of property rights could never exceed the consideration of peasant household needs, if for no other reason than that the tenants were themselves vital components in the estate economy. So, until the increasing use of domestic peat and imported coals and the coincident introduction of stall foddering, wood production relied upon a social balance between lord and tenant. To quote the German historian, Peter Blickle, seigneurial and peasant interests only ceased to clash when 'wood was no longer [a resource] without competition'.[8]

Apart from lords and peasants, a third factor deeply influenced the development of medieval and early modern property rights: the state. It was not for nothing that Friedrich Engels chose to treat the genesis of family, state and property rights in one synthesis. Here we nevertheless refrain from dealing with the family since 'divided' feudal property had far greater impact during this period than allodial, notwithstanding the kindred constraints on freehold property.

Dominion over uninhabited wastelands formed a decisive feature during the establishment of medieval kingship. This was probably the reason why the kings claimed a certain prerogative to *alminding* woods: an argument for royal dominion in general. But it certainly also supported a more tangible claim for taxes.

It is difficult to deduce a specific royal forestry policy from late medieval evidence. But from the time when king and council acted as undisputed legislators, a number of trends mark the political alignment of the formulation of early modern property rights.

As the country's main consumer of wood products, the state had an obvious and persistent interest in reducing competitive consumption and deforestation. To achieve this, it unremittingly directed its attention towards the hazardous effects of common rights. During the entire period, therefore, state legislation clearly endorsed the class interests of the nobility in that it left the establishment of individual ownership unaffected by customary common rights. This was, in fact, the outcome of the land reform movement. But the goal was only reached through the completion of a protracted enterprise.

This enterprise consisted of two elements that are not always discernible: legislation and crown land management. From the sixteenth to the eighteenth centuries, the definition of partial property rights in wood commons was firstly transformed from unspecified fractions to physically demarcated parcels through allotment. Secondly, the state took an active part in defining the basic relationship between forest use of lord and tenant. This resulted in the general application of the overwood-underwood division on the one hand and the allowance system on the other. And having

8. P. Blickle 1989, p. 39: 'Mehr als 300 Jahre blieb der Wald strittiger Gegenstand herrschaftlicher und bäuerlicher Interessen. Das änderte sich erst, als das Holz nicht mehr konkurrenzlos war'.

done this, the system was gradually extended to apply to freeholders, underwood products etc. Thirdly, the state aspired to reduce consumption by duties and numerous trade restrictions. And finally, it totally prohibited deforestation while making an effort to promote silviculture.

The most evident state intervention in the definition of property relations belongs, however, to the reform period. The decision to regard the possessor of the overwood as the forest owner *par excellence* had a profound significance for the process. The decision was, however, not articulated. At least, we have no explicit statements on the subject. The perception of royal forestry officials was clearly inclined to disregard any peasant claims. But in reality customary use rights were, in fact, met by compensatory actions.

Even in a long time perspective, then, state policies clearly supported the establishment of private property. But with regard to forest ownership this paradoxically happened by intensely intervening in exactly that private self-determination which appeared as the key issue of possessive individualism. In general 'the spirit of the time was certainly hostile towards restrictions in property rights'.[9] But meanwhile state officials scrupulously inspected the newly established private forests. And the forest owners were required to manage them according to certain common standards and, more decisively, not to convert them to arable.

So the forest enclosure movement of the late eighteenth and early nineteenth centuries conclusively terminated the ancient interdependence between tenant and landlord in regard to woodland management and use. But it replaced that interdependence by another relationship of no less consequence – that between forest owner and state. Compared with the development in other countries, the state played a notably prominent role in the reformation of forest ownership in Denmark – as it did, in fact, in the entire reform process.

The pronouncements on early modern property rights in legislation and legal usage were in some respects fiction rather than fact. The reality of owning was always generated in the meeting of formal statements and actual praxis. And praxis frequently reflected clashing interests rather than accord. Such fields of tension are amply expressed in numerous legal cases throughout the period. But they are also vividly represented in an abundant oral tradition reflecting clashes between forest guards and pilferers. This oral record is known only from the last part of the period mainly because folklore studies were a feature of the late nineteenth century, but also because basic antagonisms over woodland uses naturally sharpened as customary rights were replaced by private property.

From the thirteenth and fourteenth centuries only very sparse evidence about property struggles exists. The provincial laws include a multitude of property rights

9. A. Linvald 1923, p. 240: 'Tidsaanden var afgjort fjendtlig mod Ejendomsrettens Begrænsning'.

prescriptions that reflect the importance of the matter – to legislators, that is. But the actual legal usage and the appearance of contradictive concepts and interests are virtually unknown. So it remains uncertain whether the principles outlined by legislation were actually applied.

During the fifteenth and sixteenth centuries, an increasing number of court certificates and rulings enable us to point out the key issues of property rights definition and effectuation. Of principal importance were the physical definition of property boundaries – and the defence of the same. So landowners (crown, church, nobility and freeholders) were the principle actors on the property rights stage. Of tenants we hear fairly little during this period, if we disregard normative instructions.

Again, source production is a major restriction. Naturally, struggles between well-off landlords are more frequently reflected in preserved collections of court rulings or other legal documents than everyday clashes between lord and peasant. So we are unable to surmise the relative importance of the two kinds of property rights conflicts. What is evident, however, is the fact that ownership was vulnerable since prescriptive possession could always be challenged. The gradual physical definition of boundaries and the substitution of oral traditions by written verification both aimed at a firmer constitution of landed property.

From the seventeenth and eighteenth centuries, the evidence for a clash of interests as regards forest use between lord and peasant is unmistakable. The number of legal cases regarding infringements of the distinction between overwood and underwood (and the allotment in overwood parcels) is overwhelming. Thousands and thousands were convicted for forest theft. From Zealand we hear that 'in this region, people do not believe that the Seventh Commandment applies to forest theft'.[10] And it appears that it would almost always be possible for the authorities to have people convicted for this felony, since they were more or less all guilty.

It was probably mainly because of its prevalence that forest theft was not treated legally as proper theft. In comparison with the very draconian punitive actions taken against ordinary thieves, forest theft was in general treated with great moderation.[11] On the one hand, the seigneurial claim on overwood rights had to prevail. On the other, the productive capacity of tenant holdings had to be maintained. So tenants should have sufficient wood supplies, and their activities should be impeded as little as possible by punishment.

Clearly this ambiguous attitude must have influenced peasant views of woodland property. Some examples suggest that even corporal punishment was considered as just an unpleasant requirement for the appropriation of wood. And as in England,

10. Pelagus 1757: 'her I egnen tror folk ikke, at det syvende bud forbyder at stjæle træ'.
11. L. C. Borup 1880, p. 157.

fines incurred through forest theft were probably not regarded as qualitatively different from the prices paid for firewood allowances.[12]

The extensive occurrence of early modern forest theft left some notable traces in the oral traditions recorded among the rural population during the late nineteenth century. 'Banditry' forms a recurrent theme.[13] In 1917 one author notes that 'among peasants – even a century ago – illegal cutting was frequently not considered as theft but rather as a bold endeavour which honoured the perpetrator if he managed to get away'.[14] Rasmus Hansen's largely contemporary picture of an inherent struggle over woodland resources (p. 3) follows the same course. So, since most tenants from time to time encountered forest theft accusations, the trials resulting from such accusations came to form a symbolic crux in the feudal relation between lord and peasant. The picture given in retrospect by the oral tradition about forest theft was that the offenders basically acted politically, that in effect forest theft was an expression of peasant resistance against the entire feudal system and the idea of forest ownership, and in favour of common rights. Severin Kjær boldly concluded that it was commonly acknowledged that 'the forest grows for the use of everyone'.[15]

A similar comprehension of forest theft is found in numerous modern European surveys on the phenomenon. The great increase in forest theft in nineteenth century Germany is regarded as an expression of an imminent conflict between lord and peasant and as a form of resistance against agrarian modernisation.[16] The same applies to southern France and to Sweden.[17] And large parts of the extensive literature on the history of forestry published during the last generation have focused intensely on the issue of power.[18]

To a certain degree, the prominence of this 'power discourse' obviously reflects an academic vogue.[19] But there were also evident elements of repression, discipline and resistance embedded in the spectacle of forest theft as it was enacted during the later part of the early modern period. The ubiquitousness of the transgression made a penchant towards arbitrary punishment obvious. Landlords and public prosecution acted against offenders only when other factors induced them to. And the authori-

12. G. Hammersley 1957, p. 146.
13. E. Hobsbawm 1969; C. S. H. Jensen 1994.
14. S. Elkjær 1917, p. 126: 'Blandt Bønder blev endnu for hundrede Aar siden ulovlig Skovhugst ofte ikke betragtet som Tyveri, men som en dristig Streg, der tjente sin Udøver til Ære, hvis han da forstod at slippe godt fra det'.
15. S. Kjær 1888, p. 321: 'Skoven vokser til alles brug'.
16. J. Mooser 1984, p. 55.
17. P. Sahlins 1994; P. Eliasson 2002.
18. E.g. B. Bushaway 1982, A. Corvol 1987, B. Fritzbøger 1989 B and K. Sundberg 1993.
19. E. Sandmo 1994.

ties created a ceremony of conflict by staging large-scale lawsuits in which substantial numbers of peasants were sentenced to pay fines or spend some days in prison.

Some evidence suggests, however, that in contravening the law peasants were being no less theatrical and (we must believe) consciously political than the authorities. From Claus Bjørn's and Lotte Dombernowsky's research on the eighteenth century, we know of numerous examples of active peasant policy-making.[20] And in a few cases, this aspect of orchestrated resistance also applies to forest theft.

Based upon court records from the 1730's, Severin Kjær refers to one such case of forest theft: 'A midsummer's night in 1723, the forest ranger and his wife crossed Gisselfeld Porsmose around midnight. Here they met farmers and hired hands from Skuderløse engaged in cutting alder and birch. It was dark, but no darker than the ranger could recognise some of the men, among them Rasmus Albertsen and Hans Knudsen; then he says to them: "What are you doing here", but Rasmus Albrektsen shouted at the others present: "Here we have the lad! Come on, come on and stick together". And to the ranger he said: "You will have an accident – we will crush you". Just then the ranger fired his pistol into the group. They consequently got very timid and somewhat awkwardly they fled while they howled and screamed at him; then each of them cut himself a stick to take on his back, and as they withdrew towards Skuderløse, they continued their howling and yelling'.[21]

At first sight the event is merely one of group crime and intimidation of a forest official. But aspects of the peasants' behaviour points towards more structural clashes. The peasants evidently expected the coming of the ranger. And, as if they had planned it, they acted collectively against him by pulling together around him. His use of firearms obviously surprised them, but their retreat from the scene was maybe even the most conspicuous part of the entire spectacle. Firstly, they howled and shouted as they went home to Skuderløse. And this conduct clearly resembled crucial elements of the *charivari* or 'rough music' employed as a means of social protest in other parts of early modern Europe.[22] Secondly, each and every one of the

20. C. Bjørn 1981; L. Dombernowsky 1985.

21. S. Kjær 1888, p. 324.: 'En Januarnat 1723 kom Skovfoged Hans Jakobsen og Hustru ved Midnatstide gaaende ud over Gisselfeld Porsmose. Her traf de Skuderløse Mænd og Karle i Færd med at hugge Elle og Birke. Det var vel mørkt, men dog ikke mørkere, end at Skovfogden kunde kjende enkelte af Mændene, deriblandt Rasmus Albrektsen og Hans Knudsen; han siger saa til dem: "Hvad giøre I her?" Men Rasmus Albrektsen raabte til de andre, som vare med: "Her have vi Karlen! Kommen hid, kommer hid og staar sammen!" Og til Skovfogden sagde han: "Du skal faa en Ulykke, vi skulle mase dig ned." I det samme skød Skovfogden med en Pistol midt iblandt dem. Derover bleve de meget frygtagtige og flygtede akaved noget hen, i det de hujede og skrege ad ham; de hug sig hver en Prygl, som de toge paa Nakken, og alt som de trak sig tilbage imod Skuderløse By, bleve de dog ved at huje og skrige med Gevalt'.

22. N. Belmont 1981; C. Ginzburg 1981; E. P. Thompson 1981; P. Sahlins 1994, pp. 34 ff, 110 ff.

men cut a stick. By doing so they both disregarded the injunction to cut and threatened to thrash the ranger.

Forest theft brought together some of the basic issues of the feudal relation between early modern lord and peasant. But, as we have seen, the significance of legal conflicts over forest resources decreased during the nineteenth century in striking contrast to the development in most other countries. As management of natural resources changed from an issue of law and politics to a largely economic matter – that is as capitalism gradually overtook feudalism – forest theft ceased, both as symbolic representation and as actual legal contravention.

General access to fuel and timber was naturally the primary precondition for this particular 'Danish experience'. But the nature of the land reform movement should also be considered. Thomas Munck concludes that 'effective government in the later eighteenth century seemed to depend not so much on its formal machinery and political traditions as on its amenability to share the "public sphere" – not in an adversarial role, but in something that could be construed as a partnership'.[23] And this consensus as regards reform also applied to forest enclosure and the exclusion of the rural population. C. D. F. Reventlow formulated this endeavour in 1794: 'all good inhabitants should consider the wood with delight and not as a source of coercion and crossness in which one cannot be seen without being punished'.[24]

Naturally, the remoulding of forest ownership during the beginning of the nineteenth century did not take place in perfect harmony. The rural population – especially the cottagers – did, in fact, lose traditional rights. And there are examples of peasants claiming that 'the wood should be returned to the village'.[25] But as the identification of post-reform woodland property with pre-reform overwood rights was normally followed by remunerations to the holders of underwood and pasture, the gross social injustice experienced in large parts of Europe found no parallel in Denmark.

When nineteenth century country dwellers told collectors of folk tales about the incessant *ancien régime* struggle between pilfering peasants and disciplining landlords, they were in fact primarily referring to the present.[26] By the middle of the century, forest thefts and clashes between forest owners and the neighbouring population were negligible. But bandit-like opposition against the seigneurial property rights that dominated the 'old order' did form a central theme in the self-image of

23. T. Munck 2000, p. 20.
24. Reisebemerkungen s. 67: 'Das Holz muß von allen guten Einwohnern mit Wohlgefallen angesehen werden, und nicht als ein Zwangs und Verdruss-Nest, in dem man nicht sich sehen lassen darf ohne gestraft zu werden.'
25. N. Rasmussen Søkilde 1875, p. 89: 'Skoven skulde gives Byen tilbage'.
26. B. Fritzbøger 2000A.

the rising class of freehold farmers. In most respects they were the winners of the reform process. To define themselves as a coherent class, they first needed a shared enemy, the tyrannical squire. And secondly, the peasantry had to appear not as the passive victim but rather as a resisting agent. The oral tradition about astute and cunning forest thieves and overpowered forest officials served this dual purpose to perfection.

Chapter 25
Rationality and sustainability

The abolition of common woodland property was a part of that general promotion of rationality and order which characterised post-Enlightenment European land reforms. Based upon a reinterpretation of Roman Law, common rights were simply regarded as an ultimate evil: 'commonage is hazardous'.[1] The absence of private property induced overexploitation of natural resources such as woods. And it was consequently the main reason for the deforestation that had lasted for centuries. In 1805 the economist Christian Olufsen concluded that 'for the most part, common ownership is to blame for most Danish woods being in bad condition and near their demise'.[2]

Nevertheless, the abolition of common rights was a long-drawn-out process. As late as in the 1880's the forestry professor in the Veterinary and Agricultural University in Copenhagen, P. E. Müller, considered that commonage 'persisted long after its perils were acknowledged not only due to the power of tradition but also because of the (more or less clear) conception of rights upon which forest management was founded; for the recollection of woodland as a pure natural boon that could only be employed by individuals through usurpation still universally permeated society's conception of the forest'.[3] So, in order to manage woods in a rational manner, property rights were to be rationalised as well.

As emphasised by Max Weber, rationality is, however, by no means an unequivocal term.[4] To conclude that traditional property was 'irrational' makes little sense. Instead we will consider which functions different kinds of property rights were intended to perform in different societal contexts.

Five distinct kinds of common woodland property will be examined: 1) the open-

1. 'Omne commune est periculosum'; Roman Law c.f. M. Bäärnhielm 1995, p. 18.
2. C. Olufsen 1805, p. 149: 'Det er for størstedelen fællesskabet at tilskrive at de allerfleste skovstrækninger i Danmark er slette og deres undergang nær'.
3. P. E. Müller 1882, p. 21: 'At denne Institution imidlertid vedblev at bestaae, længe efter at man havde lært at indse dens Farer, beroede dog ikke alene paa den Styrke, der ligger i traditionelle Tilstande, men ogsaa paa det mere eller mindre klare Retsbegreb, der laa til Grund for Skovforholdenes Ordning; thi Minderne om Skovenes Egenskab af et rent Naturgode, hvis Benyttelse ikke uden Usurpation tilkommer nogen Enkelt, gjennemtrængte endnu overalt Samfundets Betragtning af Skovene'.
4. S. Kalberg 1980.

to-all utilisation of medieval *almindinger*, 2) the horizontal common rights regarding overwood trees in late medieval *fællesskove*, 3) the horizontal common rights regarding use of underwood, 4) common pasture in otherwise allotted woods and *overdrev*, and 5) the vertical commonage between a landlord, who owned overwood, and his tenants, who owned underwood.

Open access commons were clearly restricted to periods and regions with a limited demographic pressure upon abundant natural resources. As soon as future insufficiencies manifested themselves, access was restricted – by neighbouring districts and parishes as well as by the crown. To the peasantry the chief principle of usage was that of 'household needs'. The main objective was to assure unimpeded admission to employ the wood and pasture necessary to maintain a peasant economy.

But the crown clearly had other objectives: the dominion over future settlements in *almindinger* appears to have been of primary importance. Just as in Sweden, where *almindinger* persisted during the entire early modern period, conflicting interests were at play.[5] On the one hand, the crown protected peasant rights in *almindinger* against supposedly usurping gentry. On the other, it allowed a gradual fragmentation of the *alminding* for fiscal reasons.

The common usage of unenclosed *fællesskove* also pertains to a situation with no signs of imminent shortage. But as soon as fuel and timber yields began to decrease, legislation prescribed allotment. So here we have for the first time the implicit recognition of physical fixation of use rights as a means to meet individual needs and evade abuse. This kind of physical determination of woodland property rights did, however, only apply to large trees (overwood), the first woodland resource to become scarce. In general, the employment of other resources continued to be shared. The only (although notable) exception was the manorial *enemærker* that were characterised by the total prevalence of individual ownership.

It appears that the 'under storey' in otherwise allotted woods in some – maybe exceptional – cases was utilised in common by the village community. This of course points to a profusion of coppice. But what advantages did it offer as compared with individual underwood management?

If the underwood of an entire village was considered as a unity, then it would make possible a division in panels according to an annual rotation of some fifteen years or more.[6] Such a subdivision would be pointless if conducted within the confines of a single farm woodlot. In this case, the objective was not only the supply of wickers but of very specific dimensions of wood according to species and rotation circles.

Common pasture was apparently the very basis of the open field system that characterised the entire late medieval and early modern period. In fact, individual pas-

5. Å. Holmbäck 1934.

6. For coppice rotation periods, see O. Rackham 1980, p. 141.

ture was almost non-existent. All villagers shared cattle grazing in both *overdrev* and fallow and stubble fields. And after the enclosure movement had reshaped the cultural landscape as gathered individual holdings, many peasants continued traditional stubble grazing in common.

The rationality behind this obvious preference for common pasture is hard to find. But apparently the absolute acreage of the pasture grounds was considered to be far more important than the relative. This, too, could explain the preference for inter-commoning.[7] Naturally, a large pasture offers certain risk reduction as compared with the adjoining lands of an individual farm. The prospects of finding sufficient grazing and water supplies are better in large areas than in small ones. But maybe the basic conception of resource appropriation as suggested by Peter Henningsen is also effective.[8] If the only way to augment one's own revenue is to reduce that of others, then common pasture appears to enable each participant to receive a bit more from the commune than he is really entitled to. So, in contrast to the individual lot, the common offers the prospect of increasing yields – although obviously not to all participants at the same time.

The final and most fundamental kind of common woodland property was the combined usage of different resource layers by lord and peasant, which characterised the larger part of our period. The distinction between overwood and underwood had an evident purpose: to preserve wood supplies for the land-owning upper classes. Manorial requirements regarding firewood and timber from tall trees needed special protection. But the system scarcely acknowledged the fact that trees grow. For the continuous provision of overwood was based upon underwood growth. So control of a system essentially formed to reflect social distinctions lay in the hands of the inferior part. By intensive coppice management, the tenancy simply inhibited still larger parts of the underwood from growing into overwood. As noted by *overførster* Warnstedt in 1810, 'the inhabitants of Odde and Helberskov are underwood possessors. They know of no other consideration than to use the underwood before it reaches its expected strength as overwood'.[9]

The immediate consequences of vertical commonage were then not those that had been predicted. Instead of forest conservation it prompted the conversion of mature stands to scrub wood. But the distinction between overwood and underwood was not just based upon material demands. It also implied that the lord held a primary property right to the wood – that overwood property, so to speak, equalled ownership *sensu stricto*. This formed the basis for payment of various forest rents.

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7. B. Fritzbøger 2000B.
8. P. Henningsen 2000.
9. Rentekammeret 333.11: 'und die Eingesessenen zu Odde und Helberskov sind Unterholz-besitzer. Diese kennen keine andre Rücksicht als Zu-Gute-Machung des Unterholzes, ehe dasselbe die angenommenen Stärke als Oberholz erreicht'.

And it was the assumption that lay behind the essential definition of property rights in conjunction with late eighteenth century woodland separation enclosure. So, even if the rationality of the overwood-underwood system failed with regard to material goals, it clearly succeeded as regards its inherent values.

What happened during the reform period was not the 'introduction of rationality'. The various forms of common property were all clearly rational from a contextual point of view. Rather, rationality was reformed. Means-end rationality became dominant.[10] And this presupposes a certain predictability of actions, so that to enlightened reformers 'planning history comes to be just as important as mastering nature'.[11]

In a Danish context it is precisely 'mastering of nature' and 'planning history' that appear as the principal objectives of the land reform movement. In 1788 the head of the Royal *Rentekammer*, C. D. F. Reventlow, – a man extremely conscious of image management[12] – held a frequently cited programmatic speech, in which he evoked the prospect of a landscape in which 'acidic marshes and bogs would be transformed into fertile meadows, useless scrub grubbed up, valuable forest and coppice assiduously conserved, all damaging water drained, all stones used for durable fencing as stone walls'. And he further greeted the future when 'the farmhand will make it a point of honour to be the finest worker and the farmer the best master; the time when farmer and small-holder will both be pleased with their standing, not envying each other, but as friends through mutual services, the one furthering the other's advantage'.[13]

On the whole Reventlow's program was actually realised. Not because he or the absolute king commanded it. But because it encapsulated exactly those trends that were active when he held the speech. In the physical surroundings as well as in societal relations, regulation and orderliness was the visible mark left by the reform movement. In itself this was an expression of the increasing 'mastering of nature'. Woods were not longer located randomly in the landscape but according to a plan. But orderliness in terms of measurability was also a prerequisite for 'planning history' or designing the future.

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10. N. Elias 1976 II, pp. 384 ff.
11. R. Koselleck 1988, p. 11.
12. A. Olsen 1939, p. 136.
13. Cited from C. Bjørn 1992, p. 150: 'de sure enge og moser ville være forvandlede til fede hårdbundsenge, unyttigt krat være bortryddet, nyttig skov og underskov omhyggeligt fredet, alt skadeligt vand afgravet, alle kampesten brugte til varig indhegning med stengærder […] : i hvilken tjenestekarlen vil sætte sin ære i at være den skrappeste arbejder, og bonden at være den bedste husbonde; den tid, i hvilken bonde og husmand begge vil være fornøjede med deres tilstand, ikke misunde hinanden, men som venner ved gensidige tjenester befordre den ene den andens fordel'.

Woodland enclosure was a pre-eminent contribution to an orderly landscape. The woods of medieval and early modern times were characterised by a multitude of internal edges, recurrent gradients of tall and stumpy trees and bushes and an accordingly highly divergent density. Since virtually no artificial rejuvenation took place, the diversity of species reflected natural conditions (positively) and human preferences (negatively). Since the demand for firewood was in general considerable, the forest floor was most likely devoid of dead wood but characterised by a flora reflecting the general openness of the canopy. Through enclosure and conservation, this highly anthropogenic but undesigned forest appearance changed dramatically.[14]

Firstly, by fixing the perimeter by durable fences the wood was segregated from the surrounding agricultural landscape. The result was the formation of Danish woods as delimited, geometrically shaped patches in a matrix of arable fields. It now became technically possible abstractly to determine the extent of a specific woodland property. During the nineteenth century, physical landmarks, collective memory and vaguely formulated deeds no longer formed the primary establishment of landed property. They were replaced by accurate measurements, meticulous evaluations and cartographic positioning.

Secondly, enclosure included a physical division of property rights previously sharing the same area. Parcels applied as remuneration for pasture and underwood rights were in general located at the fringes of the forest. And during the nineteenth century increase in agricultural productivity, such areas were normally cleared. So what remained were usually the conserved *fredskove* that belonged to the previous holder of overwood rights. In most cases this was the local estate. In this way, enclosure brought about an aristocratisation of woodland property. The invisible social borders surrounding the woods became just as tangible as stone walls.

So the majority of the population was shut out of the woods. The enclosed *fredskove* were private property and public access depended entirely on the owner's goodwill. In contrast to Norway and Sweden, no *allemandsrätt* (general public access) applied to Denmark, and this state was not altered until 1969 when privately owned forests were in general made open to the public.

Exclusion on principle might have influenced the general conception of the forest. Our knowledge about pre-reform perceptions of the cultural landscape is rather vague. But we find little evidence of anything but a utilitarian approach. From the early nineteenth century, on the other hand, we have abundant examples of the romantic devotion to nature in general and to woodland in particular.[15]

At a first glance this simultaneous trend of exclusion and worship in relation to woods appears paradoxical. But maybe it was precisely the absence of tangible everyday relations to woods and woodland management that formed a crucial basis

14. C. T. Vaupell 1863.
15. P. Paludan Seedorff 1993.

of romanticism. It is, at least, revealing that the conception of woodland as a symbolic contrast to civilisation appears mostly to be formulated in areas where forestry has only restricted significance. So to the Frenchman Jacques le Goff 'a great cloak of woodland and moor interrupted by cultivated clearings more or less fertile, this is the appearance of Christendom'.[16] To the Swede Orvar Löfgren, however, woodland formed the very foundation of civilisation.[17]

Woodland enclosure was not only a means to establish an orderly landscape. More important, the functional division of woodland and arable was meant to ensure future wood production.[18] As it was put by count Holsten in 1778: 'Wherever the lands are divided and the fields belonging to each farm individually fenced, it seems so much easier to manage the conservation of the forests by means of fencing, planting and protection than when woods and fields are laid out for common usage and pasture'.[19]

So mono-functionality was considered as a necessary prerequisite for sustainability, the *Nachhaltigkeit* that was the main objective of German high forest management.[20] As stated by Carl Vincents Oppermann in 1813, 'the usual purpose of forest planning is […] a uniform consumption of the existing trees so that the forest is employed with the greatest present benefit without depriving our descendants'.[21] The profound changes in property forms cannot be understood without observing the simultaneous developments within woodland management.

The ideal of sustainability was obviously based upon a reaction against what was considered as an immoderate customary exploitation. In 1767 Carl Christian von Gram observed that 'almost from the beginning of the world the prejudice prevailed that the forests were without end and that one should exploit them as one liked'.[22] In contrast, reforms ensured that the new conception of sustainability was emphasised.

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16. J. le Goff 1982, p. 106: 'Un grand manteau de forêts et de lande troué par des clairières cultivées, plus ou moins fertiles, tel est le visage de la Chrétienté'.
17. O. Löfgren 1993.
18. R. P. Sieferle 1982, pp. 200 ff.
19. Indberetninger om kornavlen, p. 65: 'hvor jorderne bliver inddelt og hver gaards tilhørende grunde for sig selv indhegnet, der syvnes det saa meget lættere at kunde sørges for skovens conservation ved indheigning, plandtning og opfredning, end saalænge saavel skov som agerland ligger ud til fælleds brug og græsning' (1778).
20. H. Lowood 1990.
21. Cited from M. Schaffalitzky de Muckadell 1946, p. 276: 'Det sædvanlige Øiemed ved en Skovs Taxation er en […] lige Afbenyttelse af de forefundne Træer saaledes at man i den nærværende Tid dragger den størst mulige Nytte af Skoven uden af fornærme Efterkommerne'.
22. Rigsarkivet, Rentekammeret 3323.87: Letter from C. C. von Gram to the *Landvæsenskommission* 14.11.1767: 'Fast von Anfang der Welt her hat das Vorurtheil regieret, daß die Wäldern kein Ende kriegten, und daß daraus soviel genommen werden könnte, als man nur immer wollte'.

The decisive forest management reforms of the late eighteenth and early nineteenth centuries for which G. W. Brüel was an exponent were based upon predictability. And predictability concerning wood increment required mono-functionality. But as long as property forms reflected the multi-functional character of woodland management, this state of alloyed wood production was unattainable.

Dansk sammendrag

I begyndelsen af 1880erne nedskrev den fynske skolelærer Rasmus Hansen følgende historie, han havde fået fortalt af sin farmor som erindringer fra hendes barndom i 1760erne: 'Nådigfruen havde et år givet mændene i Gudbjerg en rigtig god udvisning, der bestod af en hel snes ege og lige så mange bøge. Der var en travlhed dermed en fjortendags tid; og hver mand fik en del til vogntræ, til bødkerklov, til planker, til alle slags bohave og hustømmer, for nu ikke at nævne den mængde gode brænde hver mand fik. Ja, fruen havde end også drevet sin godhed så vidt, at hun havde ladet dem forstå, hun ikke engang ville tage det unådigt op om de solgte et eller andet, "hvad de troede at de kunne undvære".

Nu blev det foreslået i mændenes lav, at det kunne være meget passende at bjerge noget mere ovenpå dette pust, da det nu ville være meget vanskeligt at opdage det, da de havde så meget, de var kommet til på ærlig måde. På ærlig måde? gentog Gamle Niels. Det er ærlig måde, om vi hugger hver eg og bøg, Vorherre lader gro på vore skovmål, som vi hugger el og ask, hassel og tjørn. Det jeg tør give jer syndernes forladelse, en og hver en, for det stykke arbejde; vi går kun i vore fædres spor, når vi gør det for det har altid været deres ord som tro, at "Skovtyven skal hverken hænges eller brændes". Det er heller kun præster og herredsfogeder og hele nådigherrernes slæng, der påstår det er at stjæle, når bønder hugger træ i deres egen skov; og, det forstår sig, det er også en meget indbringende tro for de store'.[1]

Historien sammenfatter godt de væsentligste elementer i fællesskabstidens ejendomsret til skov: bylavets kollektive beslutningsret, fæstebøndernes afhængighed af udvist træ fra godset, det generelle forbud mod salg, skelnen mellem eg og bøg på den ene og el, ask, hassel, tjørn og andre mindre træer på den anden side, eksistensen af gårdvise skovlodder og som det mest grundlæggende: den latente konflikt mellem herremand og bonde. Det er denne århundreder lange kamp om retten til at udnytte skovens mangeartede ressourcer, der en genstand for den foreliggende undersøgelse. Den begynder kronologisk i den tidligere middelalder og slutter omkring 1830, da Landboreformerne som helhed må anses for afsluttede. Geografisk dækker den kongeriget Danmark, indtil 1645/58 indeholdende Skånelandene, men ikke Sønderjylland.

Som regel periodiseres Danmarks historie udfra et før og efter ca. 1500. Den opdeles i middelalder og nyere tid. I modsætning der til behandles perioden ca. 1350-1800

1. R. Hansen 1883, p. 209 f.

her under et. Det skyldes, at det feudale fæsteforholds fulde udvikling efter det 14. århundredes demografiske krise opfattes som periodens afgørende brud; langt mere prægnant end den ændring af kirkeordningen, i hvilken der som regel implicit tages udgangspunkt. Og gennem en skelnen mellem overskov (store frugtbærende tømmertræer) og underskov (alle mindre træer) overførtes samfundets sociale grundstruktur ved denne tid direkte på skovudnyttelsen. Det var fra denne skelnen mellem godsskovbrug og bondeskovbrug at såvel kriminaliseringen af bøndernes hugst af store træer og deres pligt til betaling af visse skovafgifter som deres ret til udvisning (bevilling) af tømmer og brændsel udsprang. Og eftersom dette sæt af skovbrugsrettigheder varede frem til udgangen af 1700-tallet, betragtes perioden som et hele.

Den afbrydes imidlertid af de gennemgribende samfundsmæssige forandringer omkring 1800, som Landboreformerne var det mest markante synlige udtryk for. I kort form kan bruddet karakteriseres som en overgang fra en samfundsform domineret af formaliserede politisk-juridiske magtstrukturer til en styret af økonomiske markedsrelationer; eller med andre ord fra feudalisme til kapitalisme.

Ejendomsret er et helt centralt begreb i beskrivelsen af samfundets indretning og udvikling, og det er derfor behandlet i utallige bøger og artikler. Især ældre litteratur behandler det gerne udelukkende som et formelt juridisk begreb, hvorved sigtet ofte bliver at beskrive udviklingen af den fuldt udfoldede private ejendomsret, der i hvert fald som ideal kendetegnede den tidlige kapitalisme. Herved indtager begrebet imidlertid ofte en ahistorisk position som (ukritisk) anvendes på alle samfund.

I stedet for et sådant absolut ejendomsbegreb, hvor ejeren antages at besidde den fulde råderet over det ejede (også retten til at afhænde og ødelægge) tager undersøgelsen udgangspunkt i en opfattelse af ejendom ikke som én veldefineret og uforanderlig ret men snarere som en flerhed af rettigheder; heraf den engelske flertalsform *property rights*. Og det er denne flerheds foranderlige indhold snarere end normative rettighedsbestemmelser, der har interesse. Undersøgelsen tilslutter sig således en ejendomsretsdefinition formuleret af økonomerne E. G. Furubotn og Svetozar Pejovich: 'ejendomsret refererer ikke til relationer mellem mennesker og ting men snarere til sanktionerede adfærdsrelationer mellem mennesker, som udspringer af eksistensen af ting og angår deres brug'.[2]

Der er gennem historien gjort mange forsøg på at begrunde og forsvare fremkomsten af privat ejendomsret. Fire hovedgrupper af generelle ejendomsargumenter, gør sig også gældende bag de antagelser, som ofte implicit ligger til grund for de her analyserede ejendomsrelationer: 1/ den oprindelige tilegnelse (altså så at sige et historiske argument), 2/ det investerede arbejde (kun menneskeligt bearbejdede ressourcer kan i egentlig forstand være genstand for ejendomsret), 3/ ejendomsret som led i personlig frihed (et centralt element i reformperiodens politiske intentioner i

2. E.G. Furubotn & S. Pejovich 1972, p. 1139.

forbindelse med) 4/ det driftsøkonomiske argument (den private ejendomsrets egennytte som økonomiske incitament).

For den undersøgte periode berører spørgsmålet om ejendomsret til naturressourcen skov især ejendomsrettens faktiske genstand, graden af fællesskab og individuel besiddelse samt dens tingslige i modsætning til dens personelle indhold. Ejendom repræsenterer ikke alene økonomisk råderet men også politisk magt.

Brugsrettighederne til skov var siden middelalderen overalt i Europa overordentlig sammensatte. Det var således ikke usædvanligt, at flere juridiske personer på samme tid havde retten til forskellige kategorier af træer samt til skovgræsning og jagt. Visse rettigheder kunne samtidig være baseret på fællesskab, mens andre forudsatte en eller anden form for individuel fordeling; det kunne enten være en kvotering eller en rumlig opdeling. Ejendomsretten til skov var således gennem størstedelen af undersøgelsesperioden netop ikke kendetegnet ved enten fællesskab eller individuel ejendomsret men typisk ved den samtidige eksistens af begge ejendomsformer men anvendt på forskellige lag af ressourcer.

Gennem middelalder og nyere tid udviklede ejendomsretten til skov sig i dansk sammenhæng fra en tilstand, som havde stor lighed med moderne økonomisk teoris 'open access pools', til stærkt statskontrolleret individuel ejendomsret. Selv når man gør sig fri af den i denne sammenhæng traditionelle teleologi, beskrev forholdet altså ubestrideligt en udvikling fra fælles til individuel. Men der må tages nogle forbehold. For det første er det ikke muligt at bestemme entydigt, hvilken status de almindinger, der kendes fra 1200-tallets landskabslove, egentlig havde. Og de individuelle skove og skovlodder, som også optræder i landskabslovene, kan meget vel kan have forekommet væsentlig hyppigere end almindingerne. For det andet antyder analyser af blandt andet relikte marksystemer, at individuel besiddelse kendetegnede jernalderens samfund i højere grad end senmiddelalderens markfællesskaber.

Middelalderlige kilder fokuserer især på brugsrettens fordeling. De skelner mellem den individuelle brugsret til skovlodder og den fælles ret til almindinger. Men allerede kort efter landskabslovenes udstedelse i 1200-tallet blev den uhindrede adgang til at udnytte almindingerne begrænset. Selvom begrebet fortsat blev anvendt, erstattedes almindingerne som regel af fællesarealer, hvis brug begrænsedes til en veldefineret gruppe af bebyggelser; dvs. af overdrev.

Den middelalderlige kildeproduktions udtalte sociale skævhed gør det overordentlig vanskeligt at beskrive samfundets ejendomsstruktur i detaljer. Men den var langt fra præget af lighed. Det er derfor næppe sandsynligt, at almindingerne virkelig var åbne for alle. Eftersom landskabslovenes uspecificerede 'bønder' antagelig var selvejere, er det sandsynligt at landboer og gårdsæder – for ikke at tale om trælle og fledføringer – var lukket ude. Men vi ved det strengt taget ikke.

Den sociale ulighed med hensyn til udnyttelse af skovens ressourcer bliver først velunderbygget i det feudale fæsteforhold. Da indføres en skelnen mellem overskov

og underskov/skovgræsning, som modsvarer samfundets to dominerende klasser. Godsejerstanden forbeholder sig ret til overskoven, mens dens fæstere får ret til græsningen og underskoven. Ejendomsretten har altså et klart fordelingsaspekt, og udpegningen af parthavere i overdrev er ligesom indførelsen af skellet mellem overskov og underskov et klart udtryk for betydningen af den faktiske brugsret frem for den mere abstrakte og principielle ejendomsret.

Denne betydning bliver også åbenbar i den måde, hvorpå overdrev senere deles mellem parthaverne. Denne deling gælder nemlig ikke nødvendigvis alle ressourcer, men kan sagtens angå kun træer eller græsning. Det var altså udnyttelsen af specifikke ressourcer snarere end deres helhed der blev uddelt til de enkelte gårde. Derfor anvendte man ofte en simpel kvotering (så og så stor en brøkdel af træer eller græsning) i stedet for en fysisk udstykning.

Gennem hele middelalderen søgte kronen at gøre sin indflydelse gældende overfor udnyttelsen af naturressoucer. Især i de større sammenhængende skovområder, der henlå som alminding. Der kan således spores flere forsøg på at gøre sådanne arealer til regaler, hvorved afgifter af nyanlagte bebyggelser i almindingen skulle tilfalde kronen. Den danske kongemagt fulgte på dette punkt en kurs, der nøje svarer til den, man samtidig kunne iagttage i udlandet. En ikke ubetydelig del af de kongelev, der opregnes i samlingshåndskriftet Kong Valdemars Jordebog antages således at have været almindingskove.

Den sene middelalders udbredte (gen)etablering af hovedgårds- og landsbygrænser repræsenterer ligeledes en skærpet manifestation af ejendomsret. Men som det var tilfældet med overdrevsrettighedernes definition, således angik også anlæggelsen af landsbygrænser ofte kun en ressource ad gangen. Grænsen kunne således anvise, til hvilken landsby et bestemt træ og dets frugter hørte, uden at den nødvendigvis berørte græsningsrettigheder. Og derved lignede den jo dybest set de grænser, som adskilte markjordens tusindvis af ager- og englodder fra hinanden.

Den gradvise dannelse af hovedgårdsenemærker gennem senmiddelalder og nyere tid repræsenterede til gengæld en anderledes omfattende ejendomsretsdefinition. Bortset fra Skånske Lovs vage beskrivelser af individuelle skove er det således her, vi finder de første vidnesbyrd om en altomfattende ejendomsret med lighedstræk med juridiske teoriers *dominium plenum* og det 19. århundredes idealer. I enemærker havde ejeren fuldkommen råderet over alle ressourcer, idet den statslige regulering dog tog mærkbart til under enevælden. Og endvidere havde fæstere ofte ret til udvisning af brænde fra enemærket.

Adelige hovedgårdsejere var imidlertid ikke ene om at have enemærker. De utallige selvejerskovlodder, som blev rebet og udskiftet i den samme periode, synes også at have haft enemærkets kendetegn. Men for selvejerbonden var råderetten foruden statslig lovgivning begrænset dels af en eventuel herlighedsejer og dels af hans medarvinger.

Gennem perioden fra det 15. til det 18. århundrede blev stort set alle fællesskove, som ikke befandt sig i lodskiftede agre eller enge (og således var udskiftet med dem) delt mellem de parthavende bønder. De gårdvise skovlodder, som denne proces resulterede i, medførte imidlertid ikke den samme grad af råderet som i de førnævnte enemærker.

Nok indebar skovudskiftningen en accentueret ejendomsret i og med at hver gårds besiddelse blev defineret rumligt og markeret med sten, staver eller indhuggede mærker på skeltræer. Men eftersom lodderne fortsat udnyttedes i fællesskab, var det stadig brugsretten snarere end ejendomsretten, som havde betydning. Ligesom markskovene var de lodskiftede bondeskove almindeligvis udlagt til fælles græsning, og deres overskovstræer var stadig forbeholdt herremanden. Størstedelen af Danmarks skove indgik altså frem mod Landboreformerne i et fællesskab i to dimensioner: i et horisontalt fællesskab mellem landsbyens bønder, der angik græsning (og eventuelt underskov) og et vertikalt fælleskab mellem herremand og fæstebonde vedrørende træernes udnyttelse.

Helt frem til midt i det 17. århundrede gjorde kronens indflydelse på ejendomsretten til skov sig først og fremmest gældende gennem dens forvaltning af egne skovejendomme og dens bidrag til retsdannelsen gennem lovgivning og domsafsigelser i højeste instans. Den tidligste lovgivning havde entydigt til formål at beskytte de mest udsatte ressourcer, nemlig tømmertræer i store dimensioner. Indførelsen af den klassiske skelnen mellem overskov og underskov såvel som påbud om ophævelse af horisontale fællesskaber mellem overskovsejere indbyrdes, blev således udstedt allerede i 14-1500-årene.

Efter enevældens indførelse i 1660 tiltog den statslige lovgivningsaktivitet markant. I perioden fra 1665 til 1733 udstedtes ikke færre end seks særlige skovforordninger, der dog alle havde formuleringen af retningslinier for de kongelige skoves drift som deres væsentligste anliggende. For private skove medførte den ældre enevældes lovgivning imidlertid et generelt forbud mod forhuggelse af skov (skovpligt) i 1681, ligesom selvejere reelt blev sidestillet med kronens fæstere. For disse blev udvisningspligten gennem 1600-tallet udstrakt til også at gælde underskoven.

Efter Den Store Udskiftningsforordning 1781 blev det sammensatte skovejendomsforhold gradvis opløst. Ved skovudskiftning eller –separation blev de forskellige lag af ejendomsret udskilt rumligt, således at overskov, underskov og græsning samledes på adskilte arealer med hver sin ejer. Ved denne proces, som blev obligatorisk med Fredskovsforordningen i 1805, fik de hidtidige underskovs– og græsningsberettigede altså tillagt perifere arealer som godtgørelse for den tabte rettighed. Men eftersom den nyindførte skovpligt alene gjaldt overskoven, blev disse vederlagsarealer ofte ryddet i forbindelse med 1800-tallets nærmest umættelige jordhunger. I et kort tidsperspektiv afstedkom de reformtiltag, der havde som formål at sikre den fremtidige træproduktion, således en voldsom reduktion af landets skovareal.

Skovenes udskiftning og indfredning gik imidlertid kun langsomt. Processen var godt i gang, da den blev gjort obligatorisk. Ophævelse af horisontale fællesskaber mellem overskovsejere var påbudt gentagne gange siden 1500-tallet, og de var da også stort set forsvundet da reformerne satte ind. Til gengæld var der stadig vertikale fællesskaber mellem overskovsejere og græsningsberettigede i ikke mindre end 1/3 af alle skove, hvoraf de fleste fandtes i Jylland. I 1830, da udskiftningen for længst skulle være gennemført, var denne andel reduceret til ca. 1/6.

Fredskovsforordningens forbud mod husdyrgræsning var endnu længere om at trænge igennem. I 1805 blev også ca. 1/3 af skovene opgjort at være fredet, men en del af disse fredninger kan meget vel have været tænkt som midlertidige. I 1830, hvor skovfreden burde have sænket sig overalt, var denne andel steget til knapt 2/3. Men mange skove græssedes altså fortsat; nogle i fællesskab mellem skovejer og græsningsberettigede fæstere, andre på hovedgårdens enemærke.

Den private ejendomsrets triumf indenfor skovbruget var kun mulig ved en stærk statslig indgriben. Og eftersom det statslige initiativ, som kom tydeligst til udtryk ved Fredskovsforordningen, havde som sit dobbelte mål at ophæve fællesskabet og sikre samfundets fremtidige forsyning med træ, indskrænkede det samtidig rækkevidden af den private ejendomsret mærkbart. I en vis forstand erstattedes det gamle fællesskab mellem ejer og bruger derved at et nyt: mellem ejer og statsmagt. Men i modsætning til situationen i store dele af det øvrige Europa, førte befolkningens udelukkelse fra skoven ikke i Danmark til nævneværdige sociale konflikter.

Adgangen til at udnytte skovens ressourcer har siden middelalderen været genstand for gentagne konflikter. I 14-1500-tallet gjaldt de fleste kendte retstvister grænsedragningen mellem nabogodsers eller –landsbyers skovlodder og fordelingen af retten til at sende svin på olden om efteråret, mens vi kun kender ganske få eksempler på sammenstød mellem herremænd og fæstere desangående. Det kan dog først og fremmest skyldes manglende kildeoverlevering.

I 1600– og 1700-tallet var det derimod især denne typer konflikter, der gjorde sig gældende. Konflikter som den, Rasmus Hansen indledningsvis skildrede. Helt grundlæggende var i denne forbindelse den skelnen mellem ulovlig hugst og andet tyveri, som også kendes i det øvrige Europa. Kun tyveri af udsavet tømmer eller kløvet brænde betragtedes og straffedes som tyveri i egentlig forstand. I den underliggende ejendomsopfattelse spillede 'arbejdet' altså øjensynlig en central rolle. Ubearbejdede naturressourcer kan ikke opfattes som ejendom i samme grad som bearbejdede.

Ulovlig hugst var et overordentlig udbredt fænomen, der belastede retsvæsenet så meget, at der i 1710 oprettedes en særdomstol til behandling af sådanne sager indenfor krongodset. Rettergangen ved denne Skov- og Jagtsession var summarisk og strafudmålingen ofte arbitrær, hvilket blandt andet skyldtes et ønske om at begrænse de godsøkonomiske skader forårsaget af den hyppige afstraffelse af kronens bøn-

der. Blandt ledende jurister betragtedes sessionen derfor med modvilje, og dens virke bidrog utvivlsomt til at skærpe modsætningsforholdet mellem skovbetjentene og landbefolkningen. Men også på privatgodser synes den ulovlige skovhugst omfattende.

Gennem 1800-tallets første årtier faldt antallet af dømte skovforbrydere imidlertid markant. Og den danske udvikling adskilte sig herved afgørende fra den kriminalisering af landbefolkningens skovudnyttelse, der kan iagttages i vore nabolande. På trods af at udskiftning og indfredning i vid udstrækning lukkede skoven for den almindelige befolkning aftog dens betydning som arena for juridiske konflikter således mærkbart. Det er i denne sammenhæng sigende, at skovforbrydelser ved århundredets midte fjernedes som særskilt kategori i den officielle kriminalitetsstatistik.

Til gengæld indtog ulovlig hugst en fremtrædende plads i mange af de folkeminder, der blev indsamlet gennem de følgende årtier. Den snedige bonde, der narrer træer fra sin husbond eller dennes foged er således et gennemgående træk i mange fortællinger 'fra gamle dage'; et træk der antyder, at skovhugsten betragtedes som på en gang social nødværgeforanstaltning og civil ulydighed. Altså en af fællesskabstidens mange uartikulerede protestformer.

Der er da også træk ved 16-1700-tallets kriminalitetsmønster, der kan støtte denne antagelse, selvom størstedelen af den ulovlige hugst var behovsbestemt brugstyveri. Især synes denne mundtlige tradition dog især at afspejle et behov i det sene 1800-tals bondestand: på den ene side at udmale den bondeundertrykkelse, som nu var ovre, og på den anden at fremstille forfædrene som mere og andet end umælende ofre. I tilbageblik var rollen som skovtyv en politisk vakt modstandsmand værdig.

Ophævelsen af den fælles brugsret til skoven var en del af den generelle europæiske promovering af fornuft og orden, som i deres selvforståelse kendetegnede den sene oplysningstids reformfædre. Med udgangspunkt i Romerrettens prætension om en absolut, individuel ejendomsret betragtedes fællesskabet som alle onders rod. Kun privat råderet, antog man, kunne forhindre skadelig overudnyttelse af naturens ressourcer.

Fællesskabets ophævelse var imidlertid en langvarig proces, som i virkeligheden gjorde sig gældende gennem det meste af undersøgelsesperioden. Og dens vigtigste drivende faktor var utvivlsomt den (indbildt eller reelt) truende træmangel.

Eksistensen af ubegrænsede fællesskaber sådan som de fandtes i de oprindelige almindinger begrænsede sig altså til perioder og geografiske områder med et relativt ringe demografisk pres på rigelige naturressourcer. De hører følgelig kun hjemme i periodens allerførste del. Så snart mangelsituationer opstod eller truede, begrænsedes adgangen til sådanne fællesområder; af tilgrænsende sogne og herreder såvel som af kronen. For størstedelen af landbefolkningen var brugsrettens bærende prin-

cip således gennem hele perioden 'husbehov'. Brugsrettigheder blev begrænset eller pålagte begrænsninger tilsidesat, når husbehovet kom under pres.

Ved almindingens omdannelse til et overdrev anvendtes den personelle definition af brugsberettigede til at begrænse ressourceudnyttelsen på samme måde, som når ejerne af en landsbys overskov delte denne mellem sig efter fastsatte kvoter. Det var først da presset på ressourcerne var tiltaget yderligere, at en egentlig rumlig fastlæggelse af ejendomsret kom på tale. Ved fikseringen af landskabelige skel mellem landsbyer, omkring enemærker og mellem bondegårdslodder søgte man at give ejendomsretten en entydig fremtrædelse. Men bortset fra hovedgårdenes enemærker gjaldt denne ejendomsmarkering som nævnt oftest kun en af skovens ressourcer, nemlig overskoven. Så entydigheden var så som så.

Undertiden anvendtes underskoven i en lodskiftet overskov fortsat i fællesskab. Vi ved ikke, hvor udbredt denne praksis var, men den kan skyldes et hensyn til underskovens drift. Hvis denne fandt sted som årshugster i fast rotation, ville en inddeling i gårdvise lodder nemlig let bogstavelig talt komme på tværs. Tilsvarende var den fælles græsning antagelig selve hovedårsagen til periodens markfællesskab. Individuel græsning forekom stort set ikke, eftersom alle landsbyboere deltes om græsningen i både overdrev, fælledmarker og efter høst. Og denne fællesgræsning tillagdes endog en sådan betydning, at mange bønder fortsatte den mange år efter, at markerne var udskiftet.

Den mest grundlæggende form for skovfællesskab var også den, der fortsatte i længst tid. Den senmiddelalderlige skelnen mellem overskov og underskov havde et indlysende formål, nemlig at sikre overklassens og statens forsyning med træ. Men systemet tog ikke hensyn til det indlysende forhold, at træer gror. Eftersom også opvækst af eg og bøg regnedes til underskoven, var den vedvarende tilgang af overskovstræer jo nemlig baseret på underskovens vækst. Så kontrollen med systemet var dybest set lagt i hænderne på bønderne.

Den umiddelbare konsekvens af det vertikale fællesskab blev derfor en anden end tiltænkt. I stedet for skovfredning førte det til en konvertering af overskov til underskov. Distinktionen mellem de to skovtyper var imidlertid ikke alene baseret på materielle behov. Den afspejlede også, at herremanden mente at besidde den primære ejendomsret til skoven; at overskoven så at sige udgjorde ejendomsrettens egentlige genstand, mens alle andre ressourcer blot var servitutter på denne. Så selvom systemet viste sig mindre rationelt end det var tænkt med hensyn til dets materielle resultater, var det under reformperioden en succes med hensyn til dets bagved liggende antagelser om ejendomsrettens karakter.

Skovudskiftningen, der således 'ordnede' ejendomsforholdene, var tillige et af de mest afgørende bidrag til landskabets ordning. I hvert fald siden middelalderen var skovene kendetegnet ved en mangfoldighed af indre bryn, gentagne gradienter af høje træer, småtræer og buskvegetation og en dertil svarende artsdiversitet. Og efter-

som stort set ingen kunstig foryngelse af skovens træer fandt sted, afspejlede artssammensætningen skovens naturforhold og menneskets præferencer. Efterspørgselen efter brændselstræ var nærmest umættelig, så antagelig var skovbunden så godt som uden dødt ved og domineret af en græs- og urtevegetation, der afspejlede den relative lysåbenhed. Dette stærkt menneskepåvirkede men ikke bevidst tilstræbte skovbillede ændredes grundlæggende med reformerne.

Ved at fastlægge geometrisk udstukne grænser mellem skoven og det omgivende åbne land, kom danske skove til at ligne øer i et hav af landbrugsjord. Samtidig blev det i 1700-årene teknisk muligt ved kortlægning og landmåling abstrakt at fastlægge den geografiske udstrækning af en udelt skovejendom, så fysiske skelmarkeringer, fælles hukommelse og vagt formulerede skøder erstattedes gradvist af nøjagtig opmåling, grundig taksering og kartografisk fiksering.

Udskiftningen var imidlertid ikke alene et middel til at sikre råderetten over stadig mere knappe ressourcer. Den var også en nødvendig forudsætning for at indføre nye metoder til en forøget, stabil og forudsigelig træproduktion. Den flerhed af ressourcer, der gjorde sig gældende i fællesskabstidens skovudnyttelse og som afspejledes i dens ejendomsstruktur, måtte afløses af et fokus på monofunktionel træproduktion. Så det sene 1700-tals gennemgribende omlægning af skovbrugets ejendomsrelationer kan ikke fuldt ud forstås uden at inddrage de fordringer, som tidens nye (primært tyskinspirerede) skovbrugsvidenskab stillede. Det var reformernes mål at skabe betingelser for et ensidigt skovbrug. Og til disse betingelser hørte entydige ejendomsforhold.

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